THE COURT-KEEPERS GUIDE:

OR,

A plain and familiar *Treatise*, needful and useful for the help of many that are imployed in the keeping of *Law-days*, or *Courts Baron*.

Wherein is largely and plainly opened the Jurisdiction of these Courts, with the learning of *Mannors*, *Copholds*, *Rents*, *Harriots*, and other *Services* and advantages belonging unto *Mannors*, to the great profit of Lords of *Mannors*, and Owners of these *Courts*.

The Fifth Edition with Additions

By the Author

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To all the Lords of Mannors, and owners of Courts Leet, and Courts Baron.

Gentlemen,

THis is now the third peice of our Law, which by the good hand of God I have lived to Engliſh, and ſend abroad into the World. And this, though ſtiled, A help to Court-keepers, to whom it will no doubt be very uſefull, and helpfull; yet it will be, or may be withall very profitable to others, ann moſt of all, to men in your capacity, who are owners of Mannors and Courts: For by this you may ſee the extent of the Juriſdiction of theſe Courts, and what you may doe therein: what is the duty of your Steward, and what you may require and expect therein from him: By this

you shall see clearly what the Profits and Perquisites of your Manner *and* Courts *are. Here is the Tenants duty, and the Lords due, and how, and by what meanes the Lord may come by it. And now if this finde as good Entertainment amongst you as my last piece did, you may perhaps ere long heare from me againe upon another Subject. Mean while let it suffice, that I am resolved to be alwayes to the Kingdome, and your selves,*

A true friend and

Servant,

William Sheppard.

The Court-keepers Guide.

Chap. I.

What a Court is; And the severall kinds of Courts.

A Court (in a Law-sense) is taken for the place where justice is judicially administred. And so it is either Spirituall; *i. e.* for spirituall causes and matters: or civill; *i. e.* for civill causes and matters. The Civill Courts are again, either of Record, as the Parliament, the Court called the Kings Bench, the Leet or Lawday, and many others. Or not of Record, as the County Court, Hundred Court, and Court Baron. *Co. Inst.* 1 *part. fol.* 58. 260. 117.

Court what.

The kinds of Courts.

We shall speak onely of the Leet and Court Baron; and first we shall

say somewhat of them both together, and then we shall speak of them asunder.

CHAP. 2.

Of a Leet and Court Baron together.

THese Courts agree in some things, as in this, 1. They are both the Kingdomes Courts. 2. They may be kept at any place within the precinct of the Court. 3. They were both originally granted by the King. 4. They were both instituted for the more speedy administration of justice. But in more things they differ. For 1. The Court Baron may be kept once every three weeks, or (as some think) oftner if it please the Lord. But a Court Leet is not kept above twice a year. 2. Court Barons did originally belong to inferiour Lords of Mannors; but Court Leets did originally belong to the King. 3. The Court Baron incident to every Mannor; so that every Lord of a Mannor may keep a Court Baron, but few have Leets; for inferiour Lords of Mannors cannot

cannot keep Leets without a speciall Prescription or a speciall Patent for them. 4. In the Court Baron the suitors are Judges, but in the Leet the Steward is Judge. 5. In the Court Baron the Jury may be of lesse then twelve, but in the Court Leet never; for in a Court Leet strangers may be impanelled of the Jury, but not so in the Court Baron. 6. A Court Baron cannot continue without two suitors *ad minimum*, but a Court Leet may continue without any suitors. 7. The Court Baron doth not enquire of any offence against the State; But the Leet doth enquire of all offences under high Treason, and of some high Treasons also; but as felonies; *Co. of Copyholds fo. 60, 61. H. 7. 4.*

Iudge.

Iury.

Now we shall speak of them asunder. And first of a Leet.

CHAP. 3.

Of the Leet.

THe Leet (called also a Lawday, and a view of Frank-pledge) is an ancient Court of Record, instituted for

Leet.

What.

reformation of publick offences or Crown matters within the precinct thereof, after the example of the Sheriffs turn. For the Leet is derived out of the Sheriffs turne, and is holden before the Steward as Judge; who hath (except in some few things) the same power for the compasse and reach of its jurisdiction, which the Sheriffe hath in his Turne for the whole County. And therefore after the grant of this derivative Leet, the Sheriffe in his turn is not to meddle within the reach of this Leet, unlesse it be in case of the neglect of this Leet; and that not then neither (as it seems) without a speciall writ: and unlesse it be in case where the Leet is forfeit into the Kings hands. And if the Sheriffe do otherwise he is a trespasser: And if the Sheriffe warne any man that doth live under the precinct of another Leet, to appear at his Court, the party may be discharged by a speciall writ. This Court at first was doubtlesse by the Kings grant, but at this day it is & may be claimed by prescription. *Finches* Law 246. *Co.* 2 part of *Inst. f.* 72. *Co.* 4 part *ch.* 54. *F. N. B.* 160.

Judge. The nature and originall of it.

Co. 4 Inst. 261. saith the Stat. of 28 Ed. 3. cap. 9. extends not to such writs upon such omission.

CHAP.

Chap. 4.

Of the place wherein the Leet is to be kept.

THe Leet may be kept in any place within the Hundred, Parish or Manor of which it is: as if it be a Leet for a Hundred it may be kept in any part of the Hundred. If it be a Leet for a Parish or Manor, it may be kept in any place within the Parish or Manor. In this therefore it doth differ from the Sheriffes Turne, which is to be kept in the accustomed place, otherwise the Sheriffe may be punished for it by indictment. *Mag. Charta ch.* 35. *Dier* 151. 8 *H.*7. 1. 4. *Co. of Copyhold f.* 60. *Powell of a Court Leet f.* 22. 23. *Co. upon Mag. Charta f.* 72.

Chap. 5.

Of the time when the Leet must be kept.

THis Court is obtained by Grant, or Prescription; if it be gotten by grant it must be kept according to the grant. Otherwise it is by Prescription, for a Leet may be kept at any time of the year, if it hath been used time out of mind so to be kept. And the Lord of this Court is not as the Sheriffe is for his Turn, bound to keep it twice a yeare (*viz.*) within a moneth of Easter, and within a moneth of Michaelmas. For one may prescribe to keep his Leet once or twice a year at any time of the year upon reasonable warning given, and if he can by usage prove it to be so kept, it is good enough. But if the Leet hath been used to be kept but twice a year, and at a day certain, or within a moneth of Michaelmas and Easter, and was never known to be kept at any other time, then it must be kept at that time, and cannot be kept at any other time. And if it be kept at any other time, all the Acts of the Court are *Coram non judice* and

and void. *Co. super Lit. 115. of Copyhold f. 60. 71. Co. 2 part of Inst. f. 72. 38. H. 6. 7. Dier 233. Powell of a Court Leet. f. 21, 22. &c.*

CHAP. 6.

The persons that are bound to do suit to this Court Leet.

ALL persons of mankind from 12. year old to sixty, except religious persons, Barons, Earles Tenants in ancient demesne, and such as have Hundreds of their own, that dwell within the precinct of other Leets, are bound to do suit in this Court. For every man must be within some Leet, and no Prescription will exempt a man from it. If therefore a man be under no particular Leet he shall be under the Sheriffs Turne. But if a man dwell within the precinct of another Leet, and have lands onely within my Leet, I may not compell him to doe service to my Leet. And yet if he dwell sometimes in one place, and sometimes in another, and one of these places is within my Leet, where he dwells at the time my Leet

where he shall be said to be commorant where not, vid. Co. 2 Inst: 322.

is held; in this case and at this time he must doe service at my Leet, for he may do suit at both places at severall times. And any stranger in case of want of Jurors may be made to serve of the Jury. And not onely Tenants that hold of the Manor wherein the Leet is, but others that live there; and not onely those that are resiants, but others may be punished there, if they there offend, and can be there met withall. *Marlb. chap.* 10. 12. *H.* 7. 13. *F N B.* 160. *old Book of entries* 390. *Powell of a Court Leet f.* 20, 21, 22.

CHAP. 7.

Of the Jurisdiction and power of the Leet and the Steward thereof. And what offences may be enquired of and punished in this Court.

1 In making a Jury. Fine.

THe Steward in this Court may compell any man that doth live within the precinct of, and doth owe suit to the Leet to serve in the Jury. And in case of want of a sufficient number, he may compell any stranger to serve of the Jury; and if he refuse, fine him for his

his contempt 7 *H.* 6. 12. And in some speciall cases he may impanell a second Jury to enquire of the concealments of the first, and fine them for their offence. 33 *H.* 8. 6. 1 *Eliz.* 17.

The Steward of this Court may fine any man for a contempt in the face of the Court; as if a man refuse to be sworn of the Jury, or being sworn to present what he hath evidence for, or depart without giving of his verdict. Or if one being duely chosen an officer and being present in Court, refuseth to be sworne, or if an affray be made in the presence of the Court, or a Tithingman refuse to present, or a Bailiffe refuse to return a pannell; in all these and the like cases the Steward of himselfe may impose a reasonable * fine on the offender, and this fine is not affearable nor traversable. But the Steward cannot at this day * commit to prison any man for his contempt, nor can he now take a Recognizance or bind any man to the good Behaviour, as heretofore he might have done, and as the Sheriffe in his Turne may doe. And yet *Co. in 4 part of his Inst. f.* 262. holdeth that he may take a Recognisance for the Peace.

2 In punishment of a contempt. Fine.

* Note, the fine must be severall, and if the offenders be amerced joyntly for joynt offences, it must be severally affered. 8 rep. Greisly's case. 12 rep. Godfreys case.

* Imprisonment. Recognisance.

7 *H.*

7 H. 6. 12. Co. 8. 36. 11. 44. Dier 211. 233. 11 H. 6. 7. Powell of a Leet f. 32, 33. 10 H. 6 8.

3 In making of officers and giving of oathes.

In this Court the Steward might and ought to have given the oath of Allegiance, when it was in use: they have power in this Court to make and swear Constables, Tithing-men, Hawards and such like officers Co. 4 part of his Inst. f. 264.

4 In the things wherein he hath Conusance.

Amongst the things whereof the Steward or a Leet hath Conusance, and wherewith the Jury is to be charged, some are such things as may be there enquired of, but cannot be there punished; but they are to be transmitted to the Justices of the Goale-delivery, or Justices of the Peace. And other things are not onely there to be enquired of, but there to be punished also. And these are some of them, offences at the common law, and others offences by certain Acts of Parliament, by which power is given to this Court therein. 27 H 8 2.

Offences by the common law.

Felonies.

The things which are here onely to be enquired of, and not to be punished, are all felonies which were so by the common law, though now they be made

Treason

Treason, as of such as are enemies to the King; falsifie or abuse the Kings Coyn or Seal: So all kind of willfull burners of houses, or barns adjoyning thereunto by night, or stacks of Corn; robbers of Churches and Chappels; takers of Doves out of Dove-houses, or young Pigions, or Hawkes out of their nests in the night; or Fishes out of Ponds, stews, or trunks in the night; stealers of tame Deere, marked Swans or Peacocks; breakers of Prison by felons, rescuers of felons, or the like; and their Accessaries before and after the felony done: of all these the Jury must make presentment. And this presentment is to be transmitted to Superiour Courts to be proceeded upon. *Cromp. Jur.* 222. 22 *Ed.* 4. 22. 19 *H.* 6. 47. 5 *H.* 4. 5. 11 *H.* 7. 1. 14 *H.* 8. 18.

This Court cannot meddle with any offence against a Statute Law, except the Statute give it power so to do, 8 *H.* 7. 1. 21 *Ed.* 4. 21. And yet if it were an offence before, against the Common law, that doth still remaine. The things whereof this Court hath perfect Conusance, and that may be enquired of, and punished here in this Court, are 1. by com-

Common law. 2. by Statute law. The offenders and offences by Common law are these.

For the Lords profit Suit of Court.

1. The defaults of Officers and suiters in doing their suit to this Court. As if any living within the precinct of the Lawday, be not returned of the Decenary, or being returned do not appear; or if any above twelve years of age had lived within the Leet, and had not taken the Oath of Allegiance, he was to have been presented here. And if any such person had come to the Court, the Steward ought to have given him this oath. *If any Customes or profits due to the Lord of the Leet, be withheld from him, and by whom.* As if any treasure trove, waife, or estray, or wreck, be kept from him: Or if any claim any royal Franchise, or levie any new Franchise, or abuse any old Franchise within the Leet. *Old book of Entries*, 507. 404. Stat. 18. *Ed.* 2. 45 *Ed.* 3. 27. *Crompt. Jur.* 213. of all that are convict or fly for felony, or are outlawed in any Action, *Powell of Courts* 160, 161. See the charge.

Oath of Allegiance.

Customes.

waife and estray &c.

Franchises:

Common Nusances

2. All common and popular Nusances or grievances done to the Kings Subjects, by purpresture made in any land, wood,

wood, or water; by walls, hedges, ditches, or houses made up or broken down: by straitening, turning, stopping, surrounding, or otherwise hurting the Common wayes, bridges or waters: by poysoning or corrupting the Aire, by the laying of any carrion or filth, setting up of houses of office, or the like: or by the selling of corrupt and unwholsome provision: or by the breaking of the due Assise of bread, bear, &c. by * Cottages, and * Inmates: by not scouring ditches, or not repayring highwayes, and bridges, and the like. And for all these the offender (be he one man or a whole Parish) may be amerced, and the Jury may order, the reforming of them under a pain. But for private or particular Nusances to persons or places, this Court hath not to doe with them. Stat. 18. *Ed.* 2. 29. *Ed.* 3. 29. 2 *Ed.* 6. 10. 1 *Jac. ch.* 19. *Co.* 4. *part of the Instit. f.* 72. *Dier* 13. *old book of Entries*, 390. 550. See the Charge.

* 10*l.* the building, 40*s.* a moneth the continuance:

* 10*s.* a moneth, Amercement:

3. All great affraies, outeries, and bloodsheds, and such liks popular tresspasses, which are tresspasses by the Common law. But not any particular tresspasse to one man, as beating him, or the like,

Notorious tresspasses and breaches of the peace:

like, unlesse bloodshed follow; nor to one Parish; as eating up, or inclosing their Common, or the like; nor any trespasse punishable by a Statute, unless the Statute give Conusance thereof to this Court. *Old book of Entries*, 300. *Co.* 9. 113. *Dier* 234. 13. *Bro.* and *Fitz. Leet and Turn.* See the Charge.

Riots Routs, and unlawfull Assemblies at the Common law are punishable in this Court. And for this the offenders are to be amerced according to discretion: this must be reasonable, and the reasonablenesse triable and avoydable, by plea or judgment of the Court in which the suit depends, 11 *Rep.* 446. *Powell of Leets*, 166.

Evill members, or persons of ill behaviour.

4. Evill members, and persons of ill behaviours that are dangerous to their neighbours, as malefactors in Parks, such as take Doves by engines, such as are common suspected theeves, or that are the common messengers of theeves, the common drunkards, the common hunters of alehouses or taverns, not having whereon to live, night walkers and day sleepers, that live idely, have no estate and yet farewell, eveſdroppers, common hedge-breakers, common peace-breakers

ers, raylers and sowers of discord between neighbours, keepers or haunters of baudy houses, common scolds, common Barretors, common Usurers, Innekeepers who do commonly entertain theeves and suspicious persons, knowing or suspecting them to be so, and such as do remove bounds or Land-markes between Parishes, Hundreds or Counties; but not such as remove bounds between persons onely. All these the Steward of this Court heretofore might have bound to the Peace or good behaviour, but at this day he can onely by the presentment of the Jury, amerce them or make way to have them bound to their good behaviour by a Justice of Peace, 18. *Ed.* 2. *Bro.* Leet throughout. 2. part of his Inst f. 73. 27 *H.* 8. 17. 4 *H.* 7. 1. *Hob. rep. pl.* 311. See Charge.

5. Constables, Tything-men, Hay- Officers.
wards, Alecunners, Bayliffes and such like Officers which are chosen and sworn in this Court, if any such being chosen refuse the office and to take the oath, or accepting doth not execute his office duely, or misbehave himself therein, as if Constables and Tything-men doe not take care of watch and ward, keeping the

the Peace, raiſe hue and cry and purſue it for the apprehending felons, when any felony is done, or raiſe hue and cry when none is done; or do not puniſh rogues, and the like. Or Tythingmen, chiefe pledges, Surveyours of high wayes, ſearchers and ſealers of Leather, and ſuch like Officers as doe not their duty. 23 *Ed.* 1. 4. 22. *Jac.* 5. 14. *Eliz.* 5. 1 *Jac.* 9. See the Charge. *Kytch.* 12.

Diſturbers of Juſtice:

6. All that reſcue perſons or things taken in a courſe of law; as reſcuers of perſons arreſted, or goods or cattell diſtrained, pound-breakers and the like. See the Charge.

Neglect of Inſtruments of Juſtice:

7. Lack of Stocks, Pillory and Tumbrell, Cucking-ſtool, Common pound. *Old book of Entries*, 390. 495. *Powell of a Leet* 156. See the Charge.

Offences in trading: Deceit:

8. All that uſe deceit in buying and ſelling, that ſell falſe wares for good, eſpecially if it be that which is to be eaten or drunk; that ſell by falſe weights and meaſures, Innekeepers, Victuallers, Bakers, Brewers, Fiſhers, Poulterers, or Fiſhmongers, that ſell that which is unwholſome for food, or ſell at unreaſonable prices; Bakers and Brewers that do not keep the Aſſiſe of Bread and Beer,

and

and Millers that take exceſſive toll 2 *Ed.* 6. 15. 21. *Jac.* 21. 14. *H.* 8. 12. 1 *Jac.* 22. 5. *Eliz.* 8. *H.* 6. 5. 27. *Ed.* 3. 10. *Hob. Rep. pl.* 163. 13. *Ed.* 3. 6. 13. *R.* 2. 11. *Co. 2. part of Inſt. f.* 72. 4. *Ed.* 5. 31. *Stat.* 6. *H.* 5. 8. *Old Book of Entries*, 390. See the Charge.

Foreſtallers, Regrators, and Ingroſſers (it ſeems) may be puniſhed in this Court by the Common Law. And Uſurers, as enemies to trading. *Powell of a Leet*, 101, 102. But in theſe and ſuch like caſes the penalty of the Statute cannot be impoſed, for Stewards have no power by the Statutes, but it is puniſhed here as an offence at the Common Law before the Statute, which doth remain ſtill; and for theſe the offender is to be amerced. *Powell of Leets.*

But this Court cannot take Indictments of any felony for the death of a man, or in any other caſe where it hath not Conuſance; And if it do ſo, it is void, and it ſeems the Judge may be puniſhed for it. So neither can it take a Preſentment of an offence done againſt a Pariſh, or againſt a man.

And therefore a Preſentment in this Court for levying of gate, To the Com-

moniusance of the inhabitants of *Dale*, for oppression in a Common, for beating a man, breaking a hedge, or the like; is void, and all the proceedings thereupon unwarrantable; and *Coram non Judice*. *Co.* 9. 114. 4 *H.* 6. 10. 22 *Ed.* 4. 22. 23 *H.* 8. 8. 41. *Ass. pl.* 30. The like is of all Presentments of any thing out of the Jurisdiction or precinct of the Court.

The offences and offenders punishable in this Court by the Statute Laws are Tanners, Curriers, Shoomakers, Searchers, Sealers, by 1 *Jac.* 22. Such as offend about fish, by 1 *Eliz.* 17. 3. *Car.* 4. about malt, by 2 *Ed.* 6. 10. 27 *Eliz.* 14. about Archery, by 33 *H.* 8. 9. about Guns, by 33 *H.* 8. 6. 14 *H.* 8. 11. about unlawful games, by 33 *H.* 8. 9. about Artificers and labourers, by 2 *Ed.* 6. 15. 24 *H.* 8. 12. about Musters, by 4 & 5 *Ph.* & *M.* 3. about High ways, by 29 *El.* 5. 2. & 3. *Ph.* & *M.* 8. 5 *Eliz.* 13. about Horses, by 32 *H.* 8. 13. about Hostlers and Victuallers, by 31 *H.* 8. 14. 41. 21 *Jac.* 21. about the price of Wine, by part of 1 *Jac.* 25. 7 *Ed.* 6. 5. about Pheasants and Partridges, by 23 *Eliz.* 10. about tracers of Hares, by 14 *H.* 8. 10. about hunting in Corn, by 23 *Eliz.* 10. about cot-

cottages and Inmates, by 31 *El.* 7. about drinking and drunkenneſſe, by 1 *Jac.* 10. 5 *Jac.* 5. 21 *Jac.* 7. about watering of Hemp where cattel drink, by 33 *H.* 8. 17. about Rogues, by 14 *Eliz.* about Crowes, by part of 24 *H.* 10. 8 *Eliz.* 15. about Horſes, 32 *H.* 8. 13. And of all theſe and ſome others, this Court may enquire by authority of theſe Acts of Parliament. See the charge afterwards, *Co.* 2 *part of his Inſt.* 263.

The Articles to be enquired of by the Leet, by 18 *Ed.* 2. were enquirable therein by the Common Law.

The Jury in this Court may make By-Laws, and enquire of the breach of them as they have been uſed to do. And for Cawſeys, High-ways and Bridges, the greater part may bind the reſt without conſent, 44 *Ed.* 3. 19. See chap. 39.

CHAP. 8.

The manner and order of proceeding in the Leet.

THE manner and order of the proceeding in this Court, is ſomewhat after the order of proceeding in

the Sheriffs turn, out of which it was derived. The Steward after he hath called the Court, doth swear and charge the Jury; the which must consist of twelve at the least, and twelve will serve: *Old book of Entries.* 392.

Jury.

And if it be a Leet for a whole Hundred, it is fit to make some of the Jury of all parts of the Hundred: And if the custome of the place be to make two or more Juries, or one grand Jury and diverse petite Juries, it is good to observe it. And the Constables, and such like Officers, must be charged also upon oath, and must Present either to the grand Jury, and they must make it part of their Presentment, or else the Officers must present alone; but the first is the better way. (And if twelve agree where the Jury doth consist of more, it is good enough, 11 *Car. B. R.*) but the Steward must see that the Presentment be good. And for this,

Officers.

Presentment.

1. That it be in Latine, for otherwise some say it is not good: but howsoever the Steward must turn it into Latine ere it be pleadable, or given in evidence.

2. That it say, Within the Jurisdiction of this Court.

3. That

3. That it be certain, for if the Presentment, be thus That J.S. did turn such a water-course, or stop such a way, and doth not say when nor where, this is void.

4. If it be of a Nusance, it must say, To the common Nusance of the People.

5. That it be made of such things whereof the Leet hath conusance, otherwise it is not good.

6. If the Presentment be of a felony, it seems it must be put under the hands and seals of the Jurors; and by writing indented of two parts, one whereof is to be under the Stewards hand; and this must remain with the Jury; and the other is to be under the hands of the Jurors delivered to the Steward, and by him to be transmitted to the Justices of the Peace at the next quarter Sessions, to the end that the party may be there tried thereupon. But for other matters presented by the Jury, the Steward is to proceed upon them: For * a Presentment in a Leet only made by the Grand Jury, is said to be as Gospel, and no Traverse lyeth to it, but in some special case, as when it doth concern freehold: as if J. S. be

* *Fitzh* there saith, that *Brittons* opinion was contrary, that every Presentment both in Leet and turn was traversable. Traverse.

Presented that he by reason of Tenure is bound to repair such a way or bridge; or when the Presentment is for not amending a way which is out of the Jurisdiction of the Court. And in these cases also he cannot put in a traverse after the first day. But no Traverse lieth to the Presentment of a bloudshed, or the like, *Dyer* 13. And upon this Presentment of offences, and no certain penalty imposed by the Jury: and so likewise for default of appearance, and other faults done in the Court, for which no certain Amercement is imposed, the Steward doth Amerce, and then it must be affered; (that is) by oath of some men sworn to that purpose it must be set down the certain summe which the offender shall pay; and this may be done either by the Jury it self for all such offences, as are within their Presentment: Or it may be by two or three of the Jury or others made afferors, sworn to that purpose, according to the custome of the Court; see the Oath afterwards. But the Steward himself cannot do it; and yet there needs no affering in these following cases.

Amercement. These defaults are usually presented by the Jury. Affeerment.

1. When the Steward himself sets a Fine

Fine in certain upon a man for any offence done in face of the Court.

2. When the offence is done by an Officer of the Court out of Court, and Presented by the Jury, and the Steward imposeth the Fine.

3. When there is an Order made upon a certain penalty, (whereof all the Resiants are to take notice at their peril, 11 *Car.* by *Jones & Berkly*) and the Order is broken and presented to be broken, and the penalty forfeit. Notice.

4. When the Jury doth Present a man for an offence done, and amerce him a certain summe for it.

5. Where the mulct in certain is appointed and set by any Statute for that offence; for in this case no other summe or punishment can be imposed. And in all these cases when the Fine or Amercement is made certain, the Steward is to Extreat it, (that is) to make out Schedules and Copies of the Offenders names, the offence done, and the summes imposed upon them, with his Warrant annexed to the Bayliffe; (or if it be an offence against a Statute, to that Officer the Statute directeth to levy it) And the Bayliffe may by this, levy it to the Extreates.

Lords use. And for this Fine or Amercement at Common Law, the Lord may either bring an action of debt, or distrain a reasonable part of the goods, and cattel distraynable of the offender himself (but not of another) in any place in the high-way, or elsewhere; and in owner or another mans custody within the precinct of the Leet (but not elsewhere;) and either sell them or put them in Pound at his choice; and if the party offer the money, the Lord must accept it, 3 *H.* 7. 4.21. *H.*7.40.2 *H.*4.24.7 *H.*6.12.5 *H.* 7.3. *Stat.*13.*Ed.*1.13. *Crompt. Jur.*212. *Bro. Leet through.* Presentment, 1.5.2. 7.*H.*8.2. *Hob rep. pl.*163.47. *Ed.*3.12. *Co.*8 40.11.14. *Old book of Entr.* 390. 550. 507. 495. *Powell of Leets, f.* 33, 34. *&c, Co.*8.38.11.32.

Debt.

Distresse.

The manner of keeping this Court, wherein this point is more largely opened, followeth.

Chap. 9.

The manner of keeping a Court Leet.

First a Warrant must be sent to give notice of the Court. And it is good to

to give notice enough, ſix days or more before the time; but if it be leſſe time it is ſufficient in Law.

This notice muſt be given by the Stewards warrant after this manner,

W. S. Gentleman Steward of the Hundred [or Mannor] of *S.* To the Bayliffe of the ſame Hundred [or Mannor] greeting. You are hereby required to warn the Leet to be kept for your Hundred [or Mannor] [or Leet and Court Baron to be kept for the Hundred of *S.* and Mannor of *A*] the 1 day of *April*, &c. by 9 of the clock in the forenoon of the ſame day, at the uſual place there, [or at the now dwelling houſe of, *&c.* as the caſe is.]

Given under my hand, &c.

W. S. Steward.

The

The Court hundred of Slaughter.

The ſtile of the Court is to be entred thus, if it be for a Hundred.

The Court of view of Frankpl. of Slaughter, held at *B.* before *W. S.* Gent. Steward the firſt day of *April* the year, &c. *Co.* 4. 2.

If it be for one Mannor or place thus:

The Court of view of Frankpl. for Slaughter, for the Mannor of Slaughter, &c. [as the caſe is held] &c.

The mannor of Slaughter.

If the Leet and Court Baron be kept together, as they may be, thus:

Slaughter.

The Court of view of Frankpl. with the Court Baron of *J. S.* Knight, for the Mannor of Slaughter there held, &c.

Then let the Crier make three ſolemn Proclamations, and then let him ſay after the Steward, thus:

All manner of perſons that have been warned to appear here this day, or owe Suit to this Court [or Courts] to be held here this day, come in, and doe your Suit; And all Officers and others, anſwer to your names at the firſt call, upon pain & peril that ſhall fall thereon.

Then

Then call all the Reſiants, and mark every one that appears with a prick, and amerce them that make default, thus: *A. B.* amerced, 6d. and ſo all the reſt; and then put in the margin over againſt their names, Are Reſiants and owe ſuit to this Court, and have made default, therefore is every of them amerced, as appears upon their heads.

Then call all the Tythingmen of every Tything, and ask him if his Tything be there; and ask him what Lawday, Hundred ſilver, or Common Fine he hath brought, and receive it.

Then call all High Conſtables, and Petite Conſtables; which done, give to every one his Oath, thus:

You ſhall ſwear, you ſhall make true Inquiry and Preſentment of all ſuch Articles as ſhall be given you in charge, & belong to your Office concerning the Kingdome, & Lord of this Leet; and ſhall not conceal or forbear any man or matter out of favour or partiality: nor Preſent any man or matter out of malice or evil will, but according to truth: *So help you God.* And

And if the Tything appear with the Tythingman, ſwear them thus:

The ſame Oath that *I. S.* your Tythingman hath ſworn to keep for his part, every one of you ſhall keep for your parts; *So help you God.*

So Ale-Taſters, and other Officers, if there be any there, are to be ſworn according to the cuſtome of the place.

Then having the names in writing of the Jury, 24. If ſo many be to be had, from the Bayliffe, bid the Cryer make an *O yes*, and bid him ſay thus: You good men that are returned to enquire for the Kingdome, and the Lord of this Leet, anſwer to your names at the firſt call, upon pain of Amercement.

Then call them by name, and mark them with a prick that appear, and having a ſufficient number, call the foreman to the Book, give him the ſame Oath as before to the Tythingman; then call the reſt, three or four at a time, and ſwear them as the Tythingman is ſworn before.

Then

Then enter the Jury thus:

A. B. —— Jur.

C. D.
E. F.
G. H. —— Jur.
I. K.

L. M.
N. O.
P. Q. —— Jur.
R. S.

Then count them; which done, command the Cryer to make a Proclamation, and then say thus, All you that are Sworn, draw near and hear your charge; and the Court commandeth all men to keep silence, while the charge is in giving.

Then give their charge to this effect.

MY Masters, you that are sworn, in every action two things are to be considered: The action it self, and the end of that action, whither it tends: for the wise man begins from the end. In the business whereabouts we are, we will at this time take occasion to adde a third, which yet in order we will

will make the first, and that shall be first by what authority we doe this, and what warrant we have for it, for that in all publick businesses is also considerable: First, then for our Authority, it is from the Law, from the supreme Magistrate; yea, from God himself, who hath and doth ratifie in Heaven the Laws and Ordinances of Magistrates agreeable to the Law of God; (whereof this is one we are now about) and requires every soul that it be subject thereunto. That this is done by authority of Law, and is agreeable to Gods Law, I think none will deny. This one plain Argument will prove the first, the Catholick, and Universal, and Continual keeping and holding these Courts throughout the Kingdome in all times and ages, and that without controlment; as also certain Acts of Parliament, for the rectifying, reforming, and directions of these

these Courts, besides the necessary and profitable use of them: Then that they are agreeable to Gods Law, and not besides nor against the same, is as clear as the former; for as our whole law doth nothing else but forbid the evil, and command the good, so all the Ordinances of the Law (whereof this is one) are to no other purpose but to see this be done, to preserve the just, and to find out and punish the contrary: And this will the better appear if we consider the particulars of the things here inquirable & punishable given in charge: whereof (I dare be bold to say) there is not one that jarreth with the Law of God, but is consonant & agreeable thereunto. Secondly, for the nature & quality of the Court, we shal the better search it by the consideration of the Original of these Courts: and the end which is to come after will tell us something more

more herein. For the Original of this Court, our Law tells us, that all Administration of Justice, was at the first for order sake put into the hands of the King, and men went to him as to the fountain and spring head: But after by reason of the multiplication of People, & so of causes, as the Realm was divided into Counties, so the power of the King was likewise divided into the Deputies of those Counties, as to subordinate Magistrates, amongst whom he was called Chief Justice, and men were, as they still are, directed to them as the streams flowing from the fountain to fetch and draw Justice to themselves; and this Deputy is him we now call *Vicecomes*, our High Sheriffe; of whose power & office it is not our purpose to speak, but to him is the Government of the County committed, and for his help therein he hath two Courts assigned to him, the

The one for publick, the Sheriffes Turn, the other for private matters called the County Court: And this alſo by multiplication being found too great a burthen for the Sheriffs and the people too, was then ſub-divided further into Hundreds and Pariſhes, who have divided the power of theſe Courts unto them in this the compaſſe of their Precincts, and there were ſuch as were ſpecial Conſervators of the Peace, now called High-conſtables in the Hundred, Petite conſtables in the Pariſhes: And ſo theſe Courts by common law have the ſame power within the Hundreds and Pariſhes, as the Sheriffe hath in his Sheriffs Turn, unleſſe it be in ſome ſpecial Caſes. So that this Court is a power for the redreſſing, and reforming of publique wrongs to the whole body of the Kingdome: of publick wrongs I ſay, for private and perſonal matters ſimply. Firſt

wrongs between man and man, whether by force or fraud, are not herein equitable, but for them the County court and Hundred is properly appointed; and therefore all such Presentments as are only of a wrong to some men or place alone are void. So that by this we see that we have the same power here that the Sheriffe hath in his Turn, unlesse it be in some speciall cases: and the nature both of this & that Court are to enquire and reforme publick injuries, and such as are against the body of the Kingdome.

Then for the ends of this Court they may be three.

1. To take notice of the Hundreders, and to keep an account of them; and therefore it may be called, the view of frankpledge, or the overfight of the people, who were all anciently call'd pledges, whereof one was the chief; for that then they

they were pledges one of anothers behaviour, whereof he that we now call Tythingman was chief.

The second end may be, that the people may be instructed in the Lawes of the Realm, and know what they ought to eschew, and what to follow.

And thirdly, and especially, for more speedy, easie and due, execution of Justice. For which purpose (as you know) we have here inquiries and search after offenders A Presentment of them and a proceeding against them. And in order & reference to these ends, we have charged you upon Oath to make; yea, to make diligent inquiry: So that you are not onely to present what comes and is offered to you but you are to search about, and that diligently for occasions; and that as you shall find truely and faithfully without favour or fear to Present: wherein I doubt not of

your care and conſcience. For me to enter into the learning of an Oath, and Arguments Divine to perſwade you to care, and your duty in this buſineſs, I hope it is altogether needleſs: we live in times of aboundance, of light and knowledge, and all (I hope) do know the Lord; yet let me ſay this, an Oath is a Sacred Ordinance of God, a holy Invocation of his Name, to witneſs the truth of that we ſay or promiſe; The qualities or qualifications of it when it is done well, is in Truth, in Righteouſneſſe and Judgment: That you omit none of the Truth, and that you preſent nothing above the truth. Secondly, that you do it alſo with Judgment, well knowing what you do. And thirdly, with Iuſtice, dealing to every man his due, without any miſaffection of love or hatred, fear or favour. Though it be too common a fault, ſlightly and ſuperficially to paſſe

passe through the businesse, yet I hope better things of you; that you will more respect the Oath of the Lord laid upon you, you will weigh the grace and favour of God to us in the enjoying of these Courts, that we have or may have Justice at so easie a rate, and that you may not be charged for receiving the grace of God in vain, and abusing his favour: I know you wil be carefull: you will weigh that by the carefull and honest discharge of your duty in this businesse, God will be honoured, Law obeyed, our selves and others benefitted: Else on the contrary if you be found negligent or corrupt, Gods Name shall be taken in vain, which he will not hold guiltlesse. And if of every idle word account be to be given, much more of every wicked and false Oath, the Law offended, Justice hindered, and your selves in soules and bodies endangered; for

the Lord will be a swift witnesse against the false swearer, and the law will set her self against him.

The Articles of your charge are like the offences and offenders you are here to enquire of, and they are of two sorts, some of them are greater, and such as this Court have no further to do with but to inquire of and present; you must inquire of, and present them. The Steward must then transmit them to some other powers to be proceeded upon further; and some of them are lesse, and such as whereof this Court hath a power of *Oier* and *Terminer*; power not onely to inquire of, but to proceed upon, and to punish. And these also are such as this Court hath power in either by the Common Law, or by Statute Lawes; we shall cast them all together, and give them to you in the least room and easiest way that we can.

WVe shall first give you the first sort of offences here to be inquired of, which we shall but only touch upon, so you are to inquire of all offences which are or were Felonies by the Common Law (except about the death of a man:) and in this consideration you are to inquire of those offences, that being Treason do include Felony, or being onely Felony: and those offences that being Felonies by the Common Law, are now by some Statutes made Treasons. So you were to have inquired of, and Presented all that did imagine or endevour the taking away of the life of the King, Queen or Prince, all that had defloured the Queen, or wife of the Prince, or Kings eldest daughter unmarried; so you are to inquire of any that levy war against the Kingdome or adhere to the enemies thereof, counterfeit any of the great Seals or money, kill the

Iustice of the one or other bench, in doing their Offices, and such like offences.

Felony. You are to inquire of all Larcenies and Felonies, in taking away of another mans goods, which is greater or less, according to circumstance; for to rob a Church of Parish goods, is Sacriledge: To take away any thing, though but a penny, openly or secretly, from the person of another, is robbery: To break a mans house with a purpose to rob, is Burglary; and these are great offences. But in other cases to steal a mans goods or chattel, if it be in value above twelve pence, is but an ordinary Felony; if under, it is but only a Petite Larceny, for which the offender is to be whiped only, and not to be brought in danger of the loss of his life and estate, as he is for the rest. The burning of houses or barnes of Corne, out-houses adjoyned to dwelling-houses

houſes in the night, is felony by the Common Law; ſo the felonious taking of Doves out of the Dove-houſe in the night, young Doves, or Goſhawkes out of their neſts, Fiſhes out of Ponds or Trunks in the night, or tame Deer, Swans or Cignets marked, or Peacocks, it ſeems is felony by the Common Law. Of all theſe you ſhall inquire and preſent.

Acceſſaries.

You ſhall inquire of the Acceſſaries to theſe offences be they before or after the offence: And after the offence; Firſt, either by the breaking of Priſon, and getting away himſelf: Or ſecondly, by helping to convey away the Priſoner, which may be by force, as reſcue or the like, or fraud: Or thirdly, by a voluntary or negligent eſcape of an offender: Or fourthly, by a miſpriſon, which is the concealment of a great offender and offence; for by all theſe wayes a man may partake

take of another mans offence, and so be liable to punishment.

These are the first sort of offenders, and if you shall find any such, you shall inquire and present what Lands and Tenements, goods and chattels, they had at the time of their offence committed, or at any time after.

For the Lords profit.

In the next place you are to inquire of such offenders, and their offences which may be heard and determined in this Court. And so you are first to inquire of such things as concern the Lords profit, and the support of the Court, as of

Suiters.

Officers, and others that owe Suit to this Court, and have not been called, or having been called have not appeared: Of such as having lived a year and a day, within the precinct of this Law day, and are not listed as a resiant, and heretofore, if they had not been sworn to the King for their Allegiance,

Oath of Allegiance.

their

their Parents or Masters are to be amerced for this. Of such as withhold any customes, or services incident to the Leet from the Lord of the Leet, as Hundred weight, Kings silver, or the like money. Of Treasure trove, *i.* Any that have found above or under ground a Treasure, the owner whereof is not known. Of Waifs; *i.* Goods stoln and left by the Felon in his strict pursuit. Of VVreck, *i.* The goods upon a Shipwrack cast into the sea, that are come to land, the Owner being cast away Of Estray, *i.* The tame beasts found wandring within the precinct of the Lawday, and not owned by any man. Of any that claim any Royal Franchises or abuse them within the Leet. For all these offences the offender is to be amerced according to your discretion.

Customes.

Hundred weight.

Treasure trove.

VVaife.

VVreck.

Estray.

Franchises.

Amercement.

The escheates of all Felonies did pertain to Lords, and therefore are in-

Escheats.

inquirable here, you are to inquire therefore of all kinds of forfeitures to the State.

Common Nusances.

Secondly, you shall inquire of common annoyances, and popular grievances, *i.* of things done to the common grievances of many: For as to the particular grievance of one man, or speciall grievance of one Parish, you are not to inquire in this Court; but that which is, or may be generall, and to many persons and places. And so it is either of a higher nature, as base and lew'd Ale-houses; though Licensed. In-mates, *i.* Such as dwell together in a Cottage, within another man, though in severall rooms of the same house, passing in and out of the same doore, being poor, and not able to maintain themselves. Cottagers, such as build new, or convert old houses into new, not laying four acres of land to it. And such as divide and multiply

10s. a moneth.

10l. The erecting, 40s. a month for continuance.

tiply houſes that become hurtfull to the place by overpeſtring it with poor. Or of a lower nature, *i.* In the ſtreets of Towns, by common wayes, Cawſeys or Bridges leading between Towns, by ſtopping up the Ditches, or not ſcouring them, building houſes or walls to ſtraiten incroachment, turning, digging pits, building houſes, pales or hedges, laying blocks, or not repairing of them, or other doing to them, to the hazard or grief of the traveller. Secondly, in the common Waters, by ſtopping, turning, or corrupting them, to the hurt of them that uſe them. Thirdly, in the Air, by corrupting it with houſes of Office, laying of garbage, carrion or the like, if it be near to the common high way. Fourthly, in the proviſion for mens bodies, when either Victualers, Butchers, Bakers, Cooks, Brewers, Maltſters or Apotheçaries do make or ſell that

Victualers Maltſters.

that which is corrupt & not wholsome for mens bodies, as when bread or bear is made of bad corn, malt or hops, or medicines of bad drugs or ſpices, or the bread ſold or offered to ſale is not well baked or beer not well brewed, or the like; or that they kept not the due Aſſiſe ſet down for Bread & Beer, and Ale. Theſe are common Nuſances, whereof you are to inquire and preſent.

And for theſe the offender may be amerced, and an order may be made under a penalty to reform it: and if it be a ſtanding Nuſance by a houſe or wall, it may be pulled down; but for every one of theſe Nuſances, being *malum in ſe*, and againſt the Common Law, the offender may be amerced according to your diſcretion, or where any Statute hath appointed a ſpeciall penalty, and this Court hath Cogniſance of it; he muſt pay that penalty,

Amerced.

nalty, as for making bad malt upon
2 *Ed.* 6. 10.

If any water any hempe or flaxe where cattle use to drink. xxs.

In the next place, you shall inquire of notorious and common Trespasses; as if any great affrais or outcries, or any affray and bloodshed have been made, by whom, & with what weapons. For the weapons that gave the blow, or were drawn to break the Peace, are forfeit to the Lord, of the Leet, of Riots, Routs, or unlawful Assemblies that have been made, and Rapes; For these are to be punished here, not as upon the Statutes, but as an offence at the Common Law; so if any levy Hue and Cry, and apprehend a man without cause, and for this, the offender is to be amerced according to your discretion. Great trespasses. Evil members and persons of ill behaviour.

Next of all, you shall inquire of and present the cómon drunkard, the cómon alehouse haunter, especially Haunter of Alehouses.

cially if he ſpend much there, and have little: He that keepeth, or doth uſually frequent a common bandy houſe; he that is a common Barretor, *i.* that takes parties, and moves ſuits, and that commonly for ſmall matters, and taking the worſt ſide. The railer and ſower of diſcord between neighbours. The eveſdropper, *i.* he that doth harken under windowes, and the like, to hear, and then tell newes to breed debate between neighbours. The night-walker, he that ſleepeth by day, and walketh by night. The common hedge breaker, a Rogue, vagabond, and ſturdy perſon, that doth wander up and down. The maſterleſſe perſon that lives without means idely, without Maſters, fareth well, hath nothing, and cannot give account of his life. The common Scold, he that commonly goeth in meſſages for theeves, or doth harbour and entertain them,

Incontinent perſons.

Barretor.

Eveſdroppers.

Night-walker.

Scold.

know.

knowing them to be dangerous & suspicious; all these may be amerced, and be bound to the good behaviour by a Justice of Peace. Amercement. Good behaviour.

You are also to inquire of, and Present, any one that hath been drunk or tipling in any Ale-house, any Ale-house keeper that doth sell without Licence, or being Licensed doth sell less then measure, one quart of the strong, and two quarts of the smallest for a penny. That doth suffer any to sit tipling in his own house, or if any do tipple in an Ale-house. vs. a time, or six hours in the stocks. xxs. a time xxs. a time 10s. a time 1r. a time

To remove bounds and marks between Neighbour-hoods, Hundreds, Parishes, and Commons, this tends to debate, and such persons are very ill members: and may be punished here. Bounds.

In the next place you shall inquire of Officers, Constables, Tything-men, Haywards, and the like, that have refused being duly cho- Officers.

fen, to take upon them the Office, and take the Oath, or being ſworn doe not their duty, as Conſtables that doe not their duty in keeping the Peace, watch and ward, in the purſuit of *Hue* and *Cry* and apprehending of Felons, and ſafe keeping of them when they have them in the ſearching of houſes every month for unlawful games, in the puniſhment of Rogues, and in execution of the Steward and Juſtices of Peace warrants againſt drunkards, &c. or the like: and for theſe offences they are to be amerced according to your diſcretion. For not puniſhing Rogues, he is to loſe twenty ſhillings for every default: and for not executing of the Juſtices of the Peace, or Stewards warrants againſt drunkards, tiplers, &c. there is a certain puniſhment which muſt be purſued.

Amercement.

Next you ſhall inquire whether you have the inſtruments of Juſtice

Inſtruments of Juſtice.

the Pillory, Stocks, Cucking-stool, and Common-Pound, all in good reparations amongst you, if not, by whose default it is; and for the lack of these, the Township is to be amerced according to your discretion.

Next you shall inquire of them that oppose or disturb the execution of Justice; as if any do make any pound-breach, and take or let out any distresse, or if any rescue be made on any officer in the doing of his office, to take away goods distrained, or any person arrested to the impediment of Justice, or if one let another out of the stocks, or any escape be suffered, the offender may be amerced according to your discretion. Disturbers of Justice.

In the next place you are to inquire of Deceits and other offences in trade and traffique, and such as are imployed therein; of all such as either make or sell deceitful wares, Deceit in trade and traffique.

or uſe deceit in that they ſell; As if a Butcher blow up his meat, or the like. Or a Tradeſman ſell be falſe weights and meaſures, or by two; that buy by greater, and ſell by leſſer meaſures: or if Bakers and Brewers keep not the Aſſiſe, the prices and quantities according to the writing of the Marſhalſie, that either ſell leſs in weight or meaſure, or take more in price then is ſet down for theſe offences, they are to be amerced as you ſhall think fit: Or if Victuallers or Fiſhers do ſell at unreaſonable rates: Or if any be a Foreſtaller, Regrator, or Ingroſſer, (that is,) do buy any proviſion or other thing coming towards any Faire, or Market, or City, or Port to be ſold, or ſhall agree to buy it before it be brought into the Fair or Market to be ſold, or ſhal perſwade with any to ſell them dearer, or to forbear to bring them into the Market, or buy up any proviſion in

VVeights and meaſures.

Aſſiſe.

Amercement.

Foreſtaller Regrator and Ingroſſer.

Fair

Fair or Market, & ſel the ſame again in any Fair or Market in the ſame place, or within four miles thereof: Or buy up Corn, Butter, Cheeſe, or other dead victuals, with intent to ſell it again to advance the price thereof; theſe are offences againſt the Common Law ſtill, and ſo to be inquired of here, and the offender is onely to be amerced for it here, according to your diſcretion.

Baker.

If any Baker in any City, Town Corporate or Market Town, make or ſell any horſe bread, which is not of lawful Aſſiſe, and a reaſonable weight, after the price of Corn and grain in the Market adjoyning: Or if any Hoſtler or Inholder, dwelling in any City, &c. make horſe bread in his Hoſtry, or without, or not ſell their horſe bread, and their hay; oats, beans, peaſe, provender and all kind of victual, both for man and beaſt, for reaſonable gain, having reſpect to the prices in the Markets

1 Offence fined.
2 Impriſonment one month.
3 Pillory.
4 To be forejudged from keeping an Inn.

adjoyning without taking anything for litter. Or if any Inneholders or hostlers dwelling in any Throughfare Town or Village (being no City, Town corporate, or Market Town where any common Baker having been an Apprentice at that trade by the space of seven years is dwelling) not make it sufficient, lawful, and of due assise, according the said price of Grain and Corn.

Tipler. If a Tipler sell not by measures allowed and sealed, he may be punished by the Common Law, or upon the Statute.

Butcher. Victualer. If any Butcher, Cook, Fisher, or other Victualler, sell any manner of corrupt victual not wholsome for mans Body.

Maltster. If any Malt-maker make any Barly-malt, (the Months of *June*, *July*, and *August* onely excepted)

2s. every quarter. but that it have in the Fat and floor, steeping and sufficient drying thereof three weeks at the least;

and

and in those Months, 17. days at the least (without which it cannot be wholsome for mans body :) Or if any mingle any Malt not being well and sufficiently made, or being made of mow-burnt or spired Barly with other good Malt, and put the same to sale. 2s. every quarter.

If any person put to sale any malt not sufficiently and well trodden, rubbed and fanned, whereby there may be conveniently fanned out of one quarrter half a peck of dust or more. 20d. every quarter.

If any keep a Tavern or sell wine by retail out of a market, or corporate Town, or there without allowance of the head Officers. Viner. 10l. a day.

If any be a Tanner not brought up in the Trade, or the child of a Tanner, or marrying a wife that hath a Tan-house and Fats. Tanner.

If a Tanner shall use the trade of a Currier, Cordwaner or Butcher, or other using, cutting or working of leather. Losse of the hides.

If any but Tanners and Tawers of leather, buy or agree for any rough hides but for sheeps.

If any Tanners do not sufficiently tan and dry their leather.

Currier. 6s. 8d. a skin.

If any Currier use any trade of cutting leather, or Curry in any house, if it be in a Market Town, but his own house; or curry leather not well tanned, and do not well curry his leather, or shall gash any leather in the shaving.

Shoomaker 3s. 4d.

If any Shoomaker make any shooes of Leather not with good stuffe, or offer to sell them on a Sunday.

Searchers 5l. 10. l. Sealers 5l.

It Lords of Leets do not choose yearly Searchers and Sealers of leather, or if the men chosen refuse, or accepting do not their duty.

* Labourers Conspiracy. 1, 10l. 20. days imprisonment. 2. 20l. or pillory, 40l. or 3, Pillory, and one year.

If any * Labourers conspire and bind themselves to do but such and such work, or so much, or in such a manner, and not to end what another hath begun.

If any Victualers conspire, or bind themselves to sell at such prices. Conspiracy of Victuallers.

If any Miller use deceit, change the grist, or take more Toll then due; he may be amerced at your discretion. 10*l.* 30. days imprisonment, &c. Amercement.

If any Butcher be a Tanner, or gash a hide, or water it but in *June*, *July*, and *August*, or sell a rotten hide, or sell a Calf under five weeks old. Tanners.

If any be a Usurer, and take more for the lone of money then his own again, this is an offence against the Common Law.

Next you shall inquire of other matters: If any man build a Cottage for dwelling, not having laid to it four Acres of Land at least of his own free-hold and inheritance to be always injoyed therewith, or if any willingly continue such a cottage; or if any place, or willingly suffer any In-mates in any such cottage. 10*l.* 40*s.* a month. 10*s.* a month.

If

Highways 20s. for not chosing, &c.

If the Constables and Churchwardens do not chuse Supervisors for the High-ways.

10s. a time for the Plows fault. 1sd. for the man.

If they have not appointed every Plow and Man his work; and if they have not done their work accordingly with the Plow and Man, you are to present it. So if men do not dig their Ditches, & pare their trees adjoyning to the high way.

Hawking, 43s. a time

If any hawk or hunt in other mens ground against their will, in their eared or codded Corn before it be in Stacks or Cocks: Trace or

6s. 8d.

kill any Hare in the snow by dogs or otherwise.

xs. a Partridge.

Take or kill any Pheasant or Partridge with nets or engines in the night.

xxs. a Pheasant.

If any keep any Greyhound, hunting dogs or ferrets, or nets to take Pheasants, not qualified.

Guns, 20s. a shot.

If any use a Gun not having one hundred pound a year to spend, and shoot with hail shot; or if he

kill

kill Pheasants, Partridges or the like Fowle therewith.

If every one have bows and arrows, and do use them; and if you have Buts well repaired, or else the Parish is to be punisht for the Buts. Archery 6s. 8d. a fault. xxs. 3. months.

If men duly called to Muster, come not with their Armes, but absent themselves without any good cause: Or if Captains, Muster-masters or other Officers, take rewards of their Souldiers to discharge them in time of Service; or do not pay them having received it. Musters, 40s.

If any keep houses of unlawful games, as cards, dice, or use to play at such games. 40s. & 6s. 8d. a time.

If any take or kill any Salmon, or Trout out of season, or take any Pickerel not being in length ten inches in fish or more: Or Salmon not being sixteen inches or more: Trouts not being twelve inches or more: Barbel not being twelve inches or more. Fish. xxs. a time the fish & nets.

If

Concealment of a Jury. 20s. a man: 10s. A fish.

If any Jury being charged to inquire of any of these last offences have not Presented it.

Losse of nets.

If any within a year fish with any net, or the like engine, whereof every mesh is not two inches and a half wide, unless it be nets to take Smelts, Lotches, Mennas, Buckheads, Gudgions and Eeles; or for these fish with other nets then hath been usual.

Horses.

If any put in any stone horse of two years old under fourteen handfuls high into any Common, or put any horse there scabbed and infectious.

Losse of them.

Crowners.

If any use Crow-nets, and thereby destroy those vermine by which Corn is destroyed, and any man refuse to pay his share for the taking of them.

Doves.

If any take Doves in the winter by door falls or engines, see below at W.

And lastly, you shall inquire of all

all the by-laws heretofore made at this Court, whether any of them have been broken, and by whom, and when, and how; And of all these things you shall make a certain and perfect presentment.

The Charge being done, cause the Cryers to make one Proclamation, and say thus.

If any man can inform the Steward, or this Inquest of any Treason, Felony, or any other matter now given in Charge or inquirable at the Leet, let him come into the Court and he shall be received.

If any do come in, swear him thus:

The evidence that you shall give to this Inquest, shall be the Truth, and nothing but the Truth: *So help you God.*

Then adjourn the Court thus by Proclamation.

All manner of Persons that have further to do at this Court, may depart

depart at this time, and appear here again at two of the clock in the afternoon.

At which time returning, call the Court thus, after an O yes:

All manner of persons that were adjourned over to two of the clock, or have further to do at this Court, let them come into the Court, and give attendance at their peril.

Then call for the Presentments of the Jury and Officers, and others that are sworn; If they be not ready give them a day, and adjourn the Court till then. And at that time call it as before, and enter all the adjournments on the Court Rolls.

But if their presentments be ready, call the Jury, and ask them whether they be agreed: and if they be all there, and say they are agreed, take them and ask them whether they be content they shall be altered in form; if they say yes, then take them in English, read them, and amend the form if need be, and afterwards turn them into Latine.

Then swear such officers and others

as

as are to be sworn, and make and swear Afferors if any thing be to be affered, as the amercements for defaults and others, and let them affer them.

The Constable swear, thus:

You shall well and duly execute the office of Constable, for the Parish or Tything of A. until another be chosen in your room, or you be discharged by order of Law: *So help you God.*

The Hayward, thus:

You shall swear, that you shall well and truly serve in the office of a Hayward for this year to come; you shall duly and truly execute all such Processe as shall be directed unto you from this Court, and you shall from time to time signifie and Present all such Pound-breaches as shall happen to be made within your Office, and likewise you shall Present all such cattle estrayed, as shall usually come within your Office, and in every thing well and truly

truly behave your ſelf during the time aforeſaid. *So help you God.*

The Afferors thus:

You ſhall well and truly Tax, Aſſeſſe, and Affer, the ſeveral amercements here Preſented, and now to you remembred; you ſhall not ſpare any man for favour, nor increaſe upon any man for malice, but upon every man according to the quality and quantity of his offence and faults: *So help you God.*

For Allegiance, thus:

You ſhall ſwear, that from this day forwards you ſhall be true and faithful to our Soveraign Lord the King, and his Heirs and lawful Succeſſors: And faith ſhall bear of life and member, and terrene Honour: And you ſhall neither know nor hear of any ill or damnmage intended unto him, that you ſhall not defend: *So help you God.*

And

And then discharge the Court thus with three Proclamations.

All manner of persons that have appeared here this day, at this Court, and have further to doe here; Let them now come in, and they shall be heard, else every one may now depart and are discharged of their attendance, and not to appear again at this Court, but are to keep their day again upon new warning.

And now having done with this Court, we come to speak of the Court Baron.

CHAP. 10.

What a Court Baron is, and the Manor.

Court Baron what it is.

THe Court Baron is an Assembly of Lord, Tenants, Steward and Bailiffe within the Mannor, to take care and inquire of causes concerning the Mannor, to see Justice duely executed; the acts and ordinances there passed to be recorded in the Rolls of the Court; the which Rolls are the Evidences of all Ordinances, Duties, customes and conveyances that do concern the Lord and Tenants, and are to be entred by the Steward, or other Officer indifferent between them, and are to remain with the Lord, that he may know his Tenants, Rents, Fines, Customes and services. *Calth. f.46.*

Evidence.

Rolls of the Court.

Or (briefly) this Court is a Court that every Lord of a Mannor hath within his Mannor, as inseparably incident thereunto. And this jurisdiction was doubtlesse Originally granted by the King to Lords of Mannors, who then were great men, and by continuance is claimed and taken by prescription.

Prescription.

This

This Court is said to be double, the one for the Triall of Titles of their Land for the taking and passing of estates, Surrenders, Admittances, and Grants, and herein the Lord or his Steward (as the custome of the place is) is Judge. And this is called the Copyholders Court. And the other is for triall of Actions under forty shillings; after the example of the County Court. And in this sense the County Court is called and accounted a kind of Court Baron: And in this Court the Freeholders are Judges: Of this latter we have nought here to say, but of the former Court onely: howbeit this is still in force, and exercised within some Mannors every three weeks. And when the Court is of this double nature, the Rolls containe matters of both Courts: but the Court may be kept for Copyhold causes, though it want Freeholders: And for the keeping hereof, there is need of a concurrence of the Lord, Steward, Freeholders, Copyholders, and Bayliffe or Reeve: And these all together can make a perfect execution of Justice in all that doth belong to the Jurisdiction of the Court.

2. Courts.

Iudge.

County Courts.

Iudges.

The Lord is chief to command and appoint the Steward. And he for matters of Title between the Copyholders is supream Judge in Law and Equity; so that he occupieth two rooms, Chancellour in case of equity; Judge in matter of right. And hath a great command also in things peculiar to himselfe, and yet in some cases the Steward doth exercise the place of supream Judge, between tenants in matter of title. He is in all places to direct and register, and record all the proceedings of the Court between Lord and Tenant, and between Tenants, and to be indifferent between them.

Chancellour.

Steward. Judge.

More particularly he may punish offences, as not performing Customes, breach of By-lawes, i. not discharging duties, and the like.

Lord.

Secondly, decide controversies about the title of Land, wherein observe this;

1. That he cannot meddle with any other Lands, but the Lands of the Manor.

2. He is not in judging tied to the strict rules of the Law, but as a Chancellor in Chancery may upon bill redresse matters in equity. *Co. of Copyhold f. 122.*

3. He

3. He is to make admittances.

4. He may make Licences: wherein observe; first, he can do more then the Steward; for he may in any Case make admittances out of the Mannor where he will, but so cannot the Steward. And he may grant a Licence to Alien by Deed (and in or out of Court as it seemeth) but so cannot the Steward without a speciall custome to inable, or a speciall authority from the Lord so to do. *Co. of Copyhold. f.* 123. 124.

Steward.
Admittances.
License.
Custome.

The Freeholders which are such as have Fee-simple Land parcell of the Mannor by Deed, these are Judges in all civill Actions, and in some cases (by speciall custome) in matters of right between Copyholders, they are also to affere, adjudge of amercements, and to returne and certifie judgements.

Freeholders duty.

The Copyholders which are such as hold any of the Land parcell of the Mannor by copy of Court Roll, these are to inform and present offences committed against the Lord within the Mannor, or otherwise according to that which the Steward shall give them in charge. And these being sworn of the Jury, in this Court, are called the Homage,

Copyholders duty.

mage, being for the most part such as owe Homage to the Lord of the Fee.

Bayliffes duty. The Bayliffe is to attend the execution of the commands and Processe of the Court, and to make return thereof when he hath executed them.

We cannot well go further to clear up these things till first we have made way thereunto, by opening some others: And because a Mannor hath such relation to a Court, that one of them cannot be, nor stand without the other; therefore we must of necessity speake something of the Mannor.

CHAP. II.

What a Mannor is, and the parts thereof.

A Mannor is Land in the hands of a Lord, of whom many Tenants (two at least) do hold, to do suit of Court. And it is made up of two things, Demesnes and Services.

Demesnes. The Demesnes properly are that part of the Mannor which is in the Lord or his Bayliffe or servants hands, whereof the Tenant hath not, or ever had to doe; But in a larger sense it doth comprehend

prehend all the Copyholds Lands alſo.

The Services all the Rents, Duties and performances of the Tenants which they are to perform and do to their Lord; For as a meſſuage or Lands cannot be called a Mannor without Tenements thereunto belonging to pay rents, and do ſervices, but doth ſtill bear the name of a meſſuage or Lands; ſo if a man have Tenements which doe pay Rents and doe Services to him, and no Meſſuage or Lands whereupon to keep Courts, and to receive his rents and ſervices; this cannot be called a Mannor: but a Seigniorie in groſſe. Services are of two kinds, *(viz.)* by Tenure and by Covenant: Services, by Tenure are of two ſorts, As if a man at this day give Land in tayle, or Leaſe land for life or years, keeping the Reverſion; in this caſe there is a Service of Fealty inſident to this Tenure between *donor* and *donee*, leſſor or leſſee: but this maketh no Mannor. But for the further opening of this, theſe things muſt be obſerved: ſome reſervations doe make neither Tenure nor Mannor; as to do Suit at the Lords Court when pleaſe the Tenant, to beat

Services.

Seigniorie in groſſe.

The kinds of ſervices

Tenure.

or kill the Lords Tenants that doe trespasse in his Demeines : to come to the Lords Court, and there to doe nothing. But if it be to come there to affere the amercement of the like, it may be a Tenure tending to support a Mannor. Some Reservations do make a Tenure, but no Mannor ; as to amend a high way, or to pray for the prosperous estate of the Lord, or to finde the Lord and his dog meat when they hunt the Fox in such a place. Some reservations do make both a Tenure and Mannor, as to do Suit of Court to the Lords Court, upon warning, though twenty miles distant, to amend the high ways within the Mannor, to wait upon the Lord within the Mannor for a certain time, to say divine Service to the Lord and his Tenants in the Court house before the Court sit. Some Reservations make a Service but no Tenure, as to wait upon the Lord twenty mile from the Mannor, and the like.

2. A Mannor is made by continuance of time, and cannot be made at this day by any person or means whatsoever, not the King himselfe. And therefore if a man at this day be seised of twenty

Acres

Acres of land, and enfeoffe nineteen several persons of nineteen Acres, and keep the twentieth Acre in his hands, and reserveth suit of Court and other services to be done by these nineteen Tenants, to the Court to be kept on the Twentieth Acre; albeit these estates be made by Deed indented, yet this is no Mannor but a Tenure in Grosse onely. For a Mannor must be by prescription, and the services time out of minde. *Calthrop. fol.* 10, 11.

For as all services will not make a Mannor, so those services which are by Covenant onely, or by Tenure if they be made by agreement within the time of memory, they do not make a Mannor. Nor can the Lord, albeit his Tenant be never so willing, unite two Mannors in one, or annex any other thing to his Mannor, or make that a part which is no part of the Mannor. *Coke of Copyhold, fol.* 53. 3.

Union of Mannors.

And yet it is held, that if the Tenants voluntarily submit themselves to such an innovation, and the same be continued time out of minde without contradiction, this may make an union, and one in name and use of two distinct Mannors; so

so if one Mannor be holden of another, these two Mannors may be united by escheat: But otherwise what they doe in one Mannor is traversable in another, *Co. of Copyholds. chap.* 31, 33.

And yet it is held that a man may at this day in some sort enlarge a Mannor by adding some Services to it: As if the Lord give parcell of his Mannor to hold by doing suit to the Lords mill within the Mannor, the Lord may distrain for this, and it is held to be parcell of the Mannor. So if the Lord make a gift in tayle, Lease for life, or years of parcell of the Mannor reserving Services in grosse, by this the Services of an ancient Mannor may be encreased. And it had been thought by some, that if a Lord have a Mannor which doth extend it self into two Towns, and he grant the Demesnes and Services in one Town, that by this the grantee hath a Mannor; but inquire of this, *Calthrop. f.* 11. But this is certain that if any thing have the reputation of a Mannor, or be usually called a Mannor, though in truth it be no Mannor, yet it may be granted by the name of a Mannor. *Calthrop. fol.* 13.

Grant. And a Mannor and Court of Copyholders,

olders, by cuſtome may be without ny Demeſnes. See after *fol. Co. of Copyholds, fol.* 52, 53.

Ancient Demeſne Mannors and Lands re certain ancient Lands known by hat name, and to be of that nature, which are recorded in the book called *Domeſday*. This Land differeth not rom other Lands, onely the Tenants of heſe Lands have certain priviledges a- bove the Tenants of other Mannors. A ee them *Coke part.* 4. *chap.* 58. But the Court of this Mannor is in the nature of Court Baron, no Court of Record; a Court wherein the ſuitors are Judges: And the proceeding herein is as the proceedings are in other Court Barons. *Crompt. Jur.* 230, 231.

Ancient Demeſnes.

Judges.

CHAP. 12.

The place wherein the Court Baron is to be held.

A Court Baron may be kept in any place within the Mannor, as the Hundred Court may be kept any where within the Hundred, and is not like in this to the Sheriffes County Court which

which in some Counties is by diver
Statutes to be kept in some speciall p
ces. But this Court cannot be kept
any place without the Mannor. And
if a man have two or three Mannors,
time out of mind the Courts of all
three Mannors have been kept in one
them; this may be good. *Co. 1. pa
fol 57.*

Chap. 13.

The time when the Court Baron must be kept.

THis Court may be kept once eve
three weeks for the tryall of Ac
ons: And the Copyholders Court
passing estates and making admittance
may be kept as often as the Lord plea

Chap. 14.

What persons are bound to do suit to the Court Baron.

ALL Freeholders of the Mannor
bound to do suit to the Freehol
ers Court; and all Copyholders

ustomary Tenants, to the Copy-holders Court. And all such as are bound by Tenure or Covenant are bound to doe it to both.

Chap. 15.

The jurisdiction and power of the Court Baron, and the Steward there, and what things are to be inquired of in this Court.

FOr such an offence as a Steward in a Leet may Fine, the * Judge of this Court may Amerce: and this Amercement need not to be affered: and for this Amercement the Lord may distrain if he can prescribe for it. *Co.* 11. 45. *Br. diverse* 13. But regularly in this Court being no Court of Record; the Steward cannot do much without the Free holders, nor can they together imprison any man, and yet *Consuetudo loci est observanda*, for in some places the jurisdiction is different from other places.

Fine:
*who is intended:
Amerce-
Affered-
Prescription:
Imprisonment:

In these Courts where are ancient Freeholders, they may hear and determine any civill Action for debt or damage under forty shillings betweene parties

Triall of Actions:

parties living within the place, or wi
out the place, for any cause ari
within the place, which are entered a

Free suitors. this manner; and therein they are
proceed according to the common La
and example of the County court: A
as to this part of the Jurisdiction, t

Judges. Freesuitors alone are Judges, and
Steward can do nothing without the
Co. 1. part. 58.

Trial of Titles. Copyholders may in this Court
Titles of their Copyholds, and bring
all Actions by plaints for this Land, a
these Actions may be heard and det
mined here. And as to this part of t
jurisdiction the Lord or the Stew
(as the custome of the place is)
Judge.

Judge. Also in this Court one Tenant m
prefer a bill to the Lord to be relie
in equity against another Tenant; a
herein the Lord alone is Judge.

The rest of the power of the Co
lieth in making estates, taking surren
ers and making admittances, and
like.

This Court being onely for the ben
fit of the place, and the Lord and Te
nants of the Mannor; the Articles a

to inquire of such things onely as tend to that purpose. As of the defaults of suitors that owe suit to the court, *Kytch. fol.* 54.

Of such as withhold or conceal the Lords Lands, Evidences or Franchises *Kytch. fol.* 55, 56.

Of such as encroach upon the Lords Lands or Royalties. *Kytch. ibid.*

Of such Tenants as are dead, and what is happened to the Lord thereby. *Kytch. fol.* 55.

Of any forfeiture by a Tenant, Freeholder or Copyholder. *Kytch. ibid.*

Of any incroachment by one Tenant upon another. *Kytch. ibid.*

Of any Surcharger or abuser of the Commons. *Kytch. ibid.*

Of any By-lawes broken. *Kytch. ibid.*

Chap. 16.

The manner and order of proceeding in the Court Baron.

In case of Actions tried here and pleas of Land in this Court, the proceedings must be much after the example of those courts out of which this is deriv'd the

the County and Hundred courts, and according to the rules of the Common law. And for the rest of the Jurisdiction the Steward doth use to swear some of the Tenants (which is called the Homage) these he doth charge with divers Articles, and upon them they do Present; And upon this presentment, the Steward is to proceed as upon the Presentment in a Leet, save onely that (as some say) the Lord cannot bring an Action of debt, but is to distrain one for the Amercement in this Court: 4 H. 4 74.

AMercement.

Distresse. Debt.

For the manner of taking Surrenders and making Admittances; see afterwards.

The manner of keeping this Court followeth.

CHAP. 17.

The manner of keeping a Court Baron.

FIrst a warrant is to be made to give notice of the Court, and it is good to give notice enough, six dayes at the least but if it be lesse it is sufficient in Law unlesse there be any speciall custome

for it. This warrant may be after this manner:

To the Bayliffe of the Mannor of *C.*

You are hereby required to ſummon and warn the Court Baron of *I. D.* Eſquire, to be holden for your Mannor of *C.* upon the third day of *Apr.* next, at the uſual place, (or at, &c.) before me or my ſufficient Deputy, and that you warn all perſons that owe ſuit to the ſame Court, to be then there to do their Services. And that you your ſelf be then there to make return hereof, and do your duty. Hereof fail not, &c. Given under my hand, &c.

W. S. Steward there.

Then the Style of the Court is to be entred thus.

Chelſtenth.

The Court Baron there held before *W.* Eſq; Steward of *John Dutton* Eſq. Lord of the Manor aforeſaid, according to cuſtome of the Mannor aforeſaid, the day and year, *Old B. of Entries f.* 12.

Then command the Bayliffe to make an O yes, and say after you thus:

All manner of Persons that have been warned to appear here this day, or have any thing to do at this Court, draw neer and give your attendance.

Then if there be any Freeholder court for entring Actions let them say

If any man will enter any Plaint let them come into the Court, and they shall be received.

And if any will enter any Plaint, must be thus:

A. B. plaineth against C. D. of a plea of debt, or of a plea of trespass, or of plea of taking and unjust detaining his beasts, or such like.

And hereupon the proceeding for the ending of these suits must be as it is in the County Court, or in the Hundred Court. The defendant is to be called by processe of Summons and Attachment and distresse, where the court so: The Plaintiffe to declare, and the Defendant to answer as the case is; and the matter must be put to issue, and determined either by a Jury if both par-

agree, to have it so, or the custome of the court will warrant it; or by witnesses; or, which is the most proper tryal in all these courts in ordinary cases, by wager of Law, (that is) the Defendants own Oath that he oweth not the money and such honest men as the court shall, assign to swear with him, that they are perswaded he swears truth, except it be in cases where wager of Law will not lie. And after Judgement, the debt, or dammage recovered is to be levied of the parties goods, which being taken, may be sold to do it. But for the method of proceeding herein, see in *Wilkinsons Treatise of Court-keeping, f. 148.* and forwards; and in *Dalton's Treatise of the Office of a Sheriffe, fol. 157, 158.* and forwards.

Then let him say, If any man will be essoyned, let him come into the court, and he shall be received.

And if any be essoyned let it be thus entred;

I. N. essoin and for suit of Court by *I. D.*

Then call all the Tenants, Freeholders, and Copyholders and Leaseholders, that owe suit by Covenant, by their names, and sport.

Freehold. Amerc. ijd. *A.B.* Amerc. ijd. *C.D.* Are Freehold: of this Court, have made default, as appears upon their heads. Therefore are both amerc.

Customary Ten.

Homag. *A.B.* *C.D.* *E.F.* *G.H.* Jur. *I.K.* *L.M.* *N.O.* *P.Q.* Jur.

The Foremans Oath.

YOu shall swear that you as foreman of this Homage with the rest of your fellows shall duly inquire, & true Presentment make of all such Articles and things as shall be given you in Charge; and therein you shall spare no man, for love, favour or affection, nor Present any man for malice, hatred, or envy, but according as things here Presentable, shall or may come to your knowledge, by information or otherwise; So shall you make thereof true Presentment, without concealment: *So help you God.*

Then

Then call the reſt of the Homage, and ſwear them by four at a time, thus:

The ſame Oath that *A. B.* your Foreman hath taken before you on his part, you and every one of you ſhall obſerve and keep of your parts: *So help you God.*

Then let the Bayliffe call them by name, and bid them ſtand near, and hear their charge.

Then give them their Charge to this effect.

YOu good men that are ſworn Our work is ſhort, and we cannot be long about it.

Our meeting is to keep a Manor Court, or Court Baron; we ſhall not ſtand to ſhew you the Antiquity: or Original of this Court, but in a word or two by opening the nature, uſe and end of the Court. It is called a Court Baron, for that it is a Court incident to every Mannor, which anciently, or originally were the courts

and Mannors of Barons. For the King, having all the Demesne Lands, with liberty to parcel it out, and reserve what Services they thought fit, and to keep Courts within their precincts, granted great quantities of Land to the Barons and great Men; and they granted away part of this, some to one, and some to another, to hold of them by such Services as they thought fit, and kept the rest in their hands. And hereof Mannors were made: which consist of Demesnes and Services, and they exercised that power of keeping Courts within these Mannors, which hath been continued as now we find it: So that these Courts notwithstanding at this day they are kept by prescription and custome; yet doubtless, Originally came by the kings grant of them, the Fountain of justice, who can erect and make Courts. And gave to these Lords in their

Courts the jurisdiction they now have to redress misdemeanors within their precincts, punish offences committed by their Tenants, and decide controversies within the Jurisdiction.

This Jurisdiction is double, the one part is for the trial of the Title of the Lands, for the taking and passing of estates, surrenders of estates, admittances and grants: and herein the Lord or his Steward, as the custome of the place is, is Judge; And the other is for the trial of Actions under Forty shillings, & herein the freeholders are Judges; and one of these may continue though the other be gone. So that the main end of the Institution of this Court was for administration of Justice, but so as it hath reference to the good of this place only, and not to the publique as the Leet hath. In order to which end, you are put upon this Office

and duty, being bound by your Te-
nure to it, and engaged by a ſolem
and ſtrict Oath to be faithful in it.
Your Office lieth in your Oath, an
your Oath contains your Office;
which is to inquire of, and Preſen
the things which ſhal be given yo
in Charge, which are ſuch thing
only which concern the profit an
advantage of the Lord and Te
nants of the Mannor. In all whic
according to the conditions of a
Oath rightly taken you are to do
truth, & to preſent what you kno
to be true, and perform what yo
have promiſed and undertaken an
to take heed of perjury) in Judg
ment, with due conſideration o
your calling to, engagement an
duty in this work; and in righteou
neſs, to do Juſtice impartially be
tween Lord and Tenant, and Te
nant and Tenant, and to give t
every one his own without reſpe
of perſons, or any partiality: th

which

which in this work of Justice, you must carefully shun. And so we shall hold you no longer in the Porch, but lead you into the House, and shew you your work contained in the Articles of your Charge, which follow.

First, you are to inquire of such things which concern the Lords benefit; as 1. Of suitors to this Court, and for this you are to know that all that owe suit to the Court, be they Copyholders; or customary Tenants, where ere they dwell, or of what age soever they be, are to attend here to be Amerced. Where Partners have land that oweth suit, the eldest shall do the suit, and Jointenance may agree so: but of them and of Feoffees of land since, *Quia Empteres* every one that hath any of the Land must do suit.

Item, if any of the Lords Land, Customes, Rents, Services, Franchises, Royalties, Services be Evidences

dences be concealed or withheld from him, or Harriots, Wards, and the like without his consent, by whom, and what it is, and how long it hath been withheld.

Item, if any incroachement be made upon the Lords Lands, or upon the Common, without License of the Lord.

Item, if any Tenant take away his Hawks, Woods, Fish, Fowl, or take any swarms of Bees, Swans-eggs, Partridge or Pheasants-eggs, Hawk or Hunt in his Mannor, or do him other trespasse in his Manor, without leave of the Lord.

If any Tenant ought to grind at the Lords Mill and do not.

Item, If any of the Lords Tenants, Freeholders or others be dead, whose death is not yet presented, and by what Tenure he held his land, in knight service or in Soccage, or by Copy, and what is come to the Lord thereby, and who is his next

next Heir, of what age he is, and in whose custody, that it may be known what is due to the Lord; whether Wardship, Relief, Escheat, Heriot, or other profit hereby: If any Tenant be dead without heir general or special; or if any Bastard purchase land and die without heir of his body: for in these cases the Lord is to have the Land by Escheat.

Item, If any Tenant have Alienated their lands, when, what and to whom, and what is due to the Lord thereby, by the custome; for the Lord must know who is his Tenant that he may know of whom to expect his Service.

If any Tenant that holdeth by Chivalry, alieneth to defeat his Lord of his Wardship, and other profits.

Item, If any Tenant have committed any forfeiture; Freeholders may forfeit by committing felony,

in

in which case after the King ha
his year and day, the Lord is
have the land, by aliening his la
in Mortmain.

Copyholders may forfeit by d
ing waſt, letting houſes fall, or b
very ruinous by want of repair,
if he have two Copyholds and in
pair one to amend the other; b
doing Felony, by cutting down
marring Timber contrary to c
ſtome. By paſſing or letting the
Land by Charter and Deed, for
muſt by ſurrender. By letting
longer then a year and a day a
cording to the cuſtome. Or be
Recuſant, and the Lord no Re-
cuſant. By not paying his rent, o
performing his ſervices, as ſuit o
Court and the like, eſpecially if h
deny and refuſe it. Or if any Copy-
holder have ſurrendred into the
hands of the Bayliffe or Tenants to
the uſe of another accoding to the
cuſtome, and the Bayliff or Tenant

do

do not present it at the next Court: This is a forfeiture if the custome be not against it. If any rescous or pound-breach be made of a distress taken by the Lord of his Bayliffe within the Mannor, for any rent or service due to the Lord. If any remove the ancient bounds between Lord and Tenant, or one Lord and another, or between Tenant and Tenant; And many other ways he may forfeit his Copyhold.

Next we shall speak of the things which concern the benefit of the Tenants; For this you are to inquire, if any take Common, that hath none, or having Common keep more then his number, or the quantity of his Land, or Chase and rechase between two Farms in two Parishes, or put in Cattle not Commonable, or incloſe, dig, build upon, or otherwise abuse and oppress the Common, without License of the Lord. Or any Tenant incloſe

the

the Land which ought to be
Common.

And lastly, you shall enquire
all other things by me omitted
which you know to appertain
your Charge; and of all these
the rest, make and return in to
a true Presentment by four of
clock in the afternoon.

Then let the Bayliffe make an O
and adjourn the Court till after din
as in the Leet. And then after dinner
any Surrenders or admittances be to
made, or Actions to be tryed, th
things must be done: Otherwise call
Jury; take their Presentments, and swe
two or more afferers, as in the Leet;
then discharge the Court.

CHAP.

CHAP. 18.

Of a Copyholder, and a Copyhold.

THe Copyhold eſtate is that for which a man hath nothing to ſhew but the Copy of the Rolls made by the Steward of the Lords Court. For the manner is, That the Steward doth write out a Remembrance of this (amongſt other things) that ſuch a one is admitted to ſuch an eſtate, and this commonly is tranſcribed in Parchment, which tranſcript is called the Court Roll: The copy whereof the Tenant hath under the Stewards hand; and this is all his evidence, and he can make no Title but by this Roll. Rolls of the Court.

The Copyholder is he which is admitted Tenant of any Lands within a Mannor, which time out of mind by uſe, and cuſtome of the Mannor hath been demiſed and demiſable to ſuch as will take the ſame in Fee-ſimple, Fee-tail, for life, years, or at will (as the cuſtome is) according to the cuſtome of the ſaid Mannor, by copy of Court Roll of the ſaid Mannor, *Weſt*, 1, *Symb. lib.* 2. *Sect.*

Sect. 646. *Coke* 4. 25. *Litt. Sect.* 13.

So that to make a Copyhold estate, two things are requisite.

1. It must be a parcel of a Mannor.

2. It must be demised, or demisable time out of mind, &c. And if either of these fail, the Copyhold Tenure is gone. For this cause the Tenure cannot be made at this day, unless it be made by Act of Parliament. *Stat.* 35 *H.* 8. 13. *Co.* 1 *part. Just f.* 58.

These Tenants in most places are called Copyholders and customary Tenants, but in some places they are called Tenants by the verge, base Tenants, or bond Tenants, &c. and so are the Lands called; base land, bond land, &c.

The grant of this Tenant is at the will of the Lord. So the Tenant was anciently a bond-man, and his Tenure a base Tenure; but time hath changed both, and now he and his estate both are so far free, that if he pay his rents and do his services according to the custome of the place, the Lord cannot hurt him of his estate. *Co.* 4. 29.

And if he or any other evict him, he shall have relief against them, whereof see afterwards.

If

If any of the Tenants will transfer or alien any of their Copyhold Lands, it must be done by way of surrender to the Lord or his Steward, or some of the Tenants according to the custome of the place, to the use of such person who is to haue it for the time agreed upon between them, and then the party is to pay his Fine, and to have it from the Lord according to the surrender, and to have it entred; and a Copy of it according to the custome of the place: and if the Lord after surrender refuse to admit, or dye, or his estate end before admittance, he or his succeſſour shall be compelled to make the admittance. And by Deed, or otherwise such Tenant cannot alien his land without committing a forfeiture, no not by way of exchange with another Tenant. And if the Copyholder will devise it, he must surrender it to the use of his last will, and declare his intent. *Co. of Copyholds* 35. And for this the Tenant need not pledge a custome, for this is common law: So neither for a surrender out of Court into the Lords hands, But to surrender to three of the Tenants, or to the Bayliffe or Reeve out of the Court,

1 How the Copyholder may grant the land. Surrender.

Admit.

Alienation.

to make this surrender good there must
Custome. be a special custome alledged for it. *Co.* 1 *part. f.* 59. And yet by a deed of Release he may extinguish his right to a Copyhold whereinto another is before admitted, and hath such an estate, as upon which the Release may enter. As if a surrender be made out of Court to
Presentment. the use of *J. S.* and it is not duely presented acording to the custome, and therefore void; yet *J. S.* is admitted accordingly, and after he that hath the right, doth by Deed release all his right to *J. S.* this will bar him and make good the estate. Contrary, where the estate to passe by the release, doth passe by way of enlargement. As if a Copyholder by License, lease for years, and then doth release to the Lessee for years. But I may surrender my reversion into the Lords hands, and he may grant it to the Lessee. *Co. of Copyhold. fol.* 100. So where a precedent estate is by admittance, as if one disseise the Copyholder, and the Copyholder release to the disseisee, these releases are void. *Co.* 4. 25. One Copyholder being ousted by another cannot release to him; if a Copyholder be ousted, and the Lord admit him to

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ousted him, by his release the Copyholder may extinguish his right. *Coke chap.* 114. And yet if a surrender be made out of Court upon condition, and presented as absolute, and so the admittance is made, the surrender by release may make it good. *Co. of Copyhold f.* 101. But if I be ousted, and the Lord admit him according to the custome, I may release to him. If a Copyholder do bargain, and sell his Copyhold land to his Lord without any Surrendor, it is said this will passe it; but if his estate be an estate of Inheritance, *Contra per Curiam M. Jac. B. R.*

These estates are in some cases ruled according to the Common Law, and in some cases according to the custome: And therefore if such a Copyholder be put out of his land by his Lord, or any other; heretofore he had no remedy but in the Lords Court, or in Chancery, yet at this day he may have remedy against his Lord or any other by *ejectione firmæ*, or Trespass, or in Chancery as a man that hath such an estate by Deed. *Co. 4. 21. 29 22. &c.* And if he make a Lease rendring rent, he may bring debt for it; and if one cut his trees he may

2 Consider according to Common Law.

Ejectione firmæ.

have an Action of treſpaſſe.

Eſtates in Fee ſimple, tail for life.

The ſame words which will make eſtates in Fee-ſimple, Fee-tail for life, &c. upon a Deed will make eſtates by Copy: and therefore if a Surrender be to the uſe of *I. S.* without limitation of any eſtate hereby, *I. S.* ſhall have an eſtate for his life only, and yet by cuſtome in ſome places it is otherwiſe. And if a Copyholder in Fee ſurrender *Habend*, after his decaſe to the uſe of his child, *in venter Sameie*, and the heir of this child; and if it dye before marriage, or full age, then to the uſe of *I. S.* and his heirs; by this the Father hath an eſtate for life, and the limitation to the child is void; and ſo it ſeems is the remainder alſo. *Co.* 4, 21, 22. &c. For a Freeholder cannot commence a *futuro*, nor one Fee depend on another *Simſons caſe adjudg. Mich.* 13 *Ia. B.* And deſcents of this land as well as the creation of the eſtate ſhall be guided by the rules of the Common Law, except there be any ſpecial cuſtome in the place to the contrary, the eldeſt ſon ſhall inherit, *Poſſeſſio fratris facit ſororem eſſe hæredem*, of the Land in Fee ſimple, otherwiſe it is the iſſue of

C

Copyholder in tail: This land may be entailed by cuſtome. *Co. of Copyfold. f.* 136. and the iſſue ſhall have a *Formedon in deſcender.* If one have iſſue, a Son and Daughter by one *venter*, and a Son by another, and the eldeſt purchaſe a Copyhold in Fee, and die without iſſue, the daughter ſhall have the Land. *Co. of Copyhold f.* 143. Entail. Cuſtome. Deſcent.

If one have a Copyhold eſtate to the heir of the mothers ſide, and he die without iſſue, it ſhall go to the heirs of the mothers ſide, and ſhall rather Eſcheat then go to the heirs of the fathers ſide. But if I purchaſe Copyhold Land, and die without iſſue, and have no heirs of my fathers ſide, it ſhall go to the heirs of my mothers ſide. If there be father, uncle and ſon, and the ſon purchaſe this Land and die, it ſhall go to the uncle, not to the father. So if there be three brothers, and the middle purchaſe this Land, and die without iſſue, the eldeſt ſhall have it. And if there be two partners or Tenants in Common of this Land; and one die having iſſue, his heir ſhall inherit, not the ſurviver. *Contra* of Joyntments. *Co. of Copyholds, Sect.* 50. *Calthrop. f.* 88, 89, 92, 93.

3 Conſider according to cuſtome.

But in other things they differ from other Inheritances, and the rules of the Common Law; and therefore theſe Inheritances, except there be a ſpecial cuſtome for it in the place, have not theſe collateral qualities which concern not deſcent, as other inheritances have. For ſuch Land ſo deſcended ſhall not be accounted Aſſets in the Heirs hands to charge him upon an obligation, the wife ſhall not be endowed, the Husband no Tenant by the curteſie, deſcent ſhall not take away entry. *Co.* 4 23.

Aſſets.

Dower.

Courteſie

A ſurrender made by a Tenant in tail of his Land (admitting it may be entailed) or by a Husband of the Copyhold he hath in the right of his wife, makes no diſcontinuance *Co. idem of Copyholds f.* 144.

Diſcontinuance.

Statute.

If the Lord enter into a Statute, or take a wife, and after the Copyhold become void, and in the Lords hands by Surrender, forfeit or eſcheat, whiles it is in his hands, it is liable to this charge: But if he grant it a new, according to the cuſtome, the Copyholder ſhall hold his eſtate diſcharged of both. *Co.* 8. 63. 4. 23. The true reaſon is, becauſe when the Copyholder is once admitted, he is

in by cuſtome which is Paramount the grant; therefore if the Lord grant a rent-charge, and then grant the Copy, yet ſhall the Copyholder hold the land diſcharged of the rent as it ſeemeth, though then he be not his Tenant. 8. rep. 63. b. For no ſtranger can be his Tenant without his conſent. *Calthrop. f.* 98. *Contra.* So if the feoffee of a Manor on condition before the condition broken, make Copyhold eſtates, they are good. *Co.* 4. 4. 24. If the Copyholder acknowledge a Statute, and then ſurrender, the Land is not liable. *Calth. f.* 98. If Tenant in tail (without a ſpecial cuſtome) or Copyholder in the right of his wife ſurrender, this is no diſcontinuance. *Co.* 4. 23. *Dyer* 263. So if the Lord make a Leaſe for years of the Mannor, (excepting all woods and underwoods) and the Leſſee make grants by Copy according to the cuſtome, the Copyholder ſhall have wood in theſe woods according to the cuſtome. *Co.* 8. 107. So if the Copyholder be uſed to have Common of Paſture or Eſtovers in the Lords woods or waſts, and the Lord Alien the woods or waſts to another in Fee, and after make a Copyhold eſtate

Condition

Diſcontinuance.

Grant.

Exception

according to the custome the Copyholder will have Common there as hath been used. *Co.*8 63. But in this case the custome in pleading must be laid specially, otherwise it is of a Lease for life by Deed. As long as a Copyhold of Inheritance is in the Tenants hands, it is not liable to any estate, or charge of the Lord, as *Dower*, *Curtesie*, *Elegit*, *Statute*, &c. but when it is in the Lords hands it is liable. *Co.*4 22 but a custome in this case may make it chargable, *Calth. f.* 88, 89, 92, 93.

Common.

Charge.

Chap. 19.

What grant of a Copyhold estate shall be esteemed good or not.

1. In respect of the Mannor of which the Land is parcell, and of the Court in which the estate is granted.

Divers things are requisite to make a good grant of a Copyhold estate.

1. There must of necessity be a good Mannor and Court continuing: For a Copyhold estate cannot be made without a Court, and a Court cannot be without a Mannor, and then there must be a custome for the allowance thereof, and this custome must be in the same Mannor: A Lord to give the Copyhold, a Te-

a Tenant of capacity to take, and the thing to be granted, which must be grantable, and may be held according to the Tenure: But for the opening of these things it must be known, touching a Mannor.

1. That a Mannor cannot be made at this day.

2. Albeit it cannot be made at this day, yet it may be marred; For a Mannor may be dissolved many ways: As first if the Court Baron (which is incident to every Mannor) be destroyed: For the Court and Mannor stand and fall together: And therefore if all the Freeholders but one eicheat to, or be purchased by the Lord, hereby the Mannor is destroyed: For there must be two freeholders at least to support the Court Baron, and two Copyholders at least to support the customary Court: So if the Lord suffer all his Copyholds but one to fall in hand, or make a Feoffment of all but one, hereby the Mannor is dissolved. But here this difference must be heeded; That there being (as we have shewed before) in every Mannor where are Freeholders and Copyholders, two Courts; A Court of Freeholders (which is by Com-

Mannor destroy.

Court destroy.

Common Law for the tryal of actions, wherein they are Judges, and a court of Copyholders which is for the surrendering and granting of estates, and making admittances, and wherein the Lord or his Steward is Judge, that one of these may stand without the other: and therefore if the Lord sell the reversion of all his Copyholds in Fee to one man, this man hath a Mannor and a Court to this purpose, and may do all touching Copyhold estates which the seller might have done, and he that sells may do all that belongs to the Freehold Court, as he did before. *Co.*4.26 6.64. *Co.*1. *part. fol.*58. So if the Lord make a Lease for years of all his Copyhold Lands, it seems the Lessee for the time of the Lease may keep Courts, and grant estates. But if the Lord make a Feoffment or Lease of one or of some of the Copyholds only; it seems this Feoffee or Lessee cannot keep a court, and therefore the Mannor as to this parcell is destroyed. If the demeans be once by the act of the party severed from the services in Fee simple, or the Copyholds from the Mannor, hereby the Mannor is destroyed for ever. *Co.*4.26 6.24.

Judge.

If

If one have a Manor and grant the Moiety of it to another, hereby the Manor is deſtroyed by *Juſt. Jones opinion.* So if the Lord ſell away the Inheritance of all the Copyholds to ſeveral perſons hereby the Manor and Court of Copyholders is diſſolved. *Quære.*

And if the ſeverance be but for an inſtant, and without any tranſmutation of poſſeſſion, yet the Mannor is deſtroyed; but by act of Law a Mannor may be divided, As when a Mannor deſcends, and is divided between two Partners, that one have one part of the Demeſnes and Services, and another the other part; each of them have a Mannor and a Court.

If one Mannor held of another eſcheat, they are united and continue both.

And yet if a Court Leet, Waif, ſtray, wreck, and the like be together by Preſcription, albeit the Mannor be deſtroyed, yet the Leet, Waifes, &c. continue. *Calthrop. fol.* 13. Fanchiſe loſt.

2. As a Mannor may be diſſolved, ſo it may be ſuſpended for a time and revived again; As if a Mannor come to Partners, and one upon the diviſion hath all the Suſpenſion of a Mannor.

the Services, and the other all the Demeſnes, and after one of them die without iſſue, ſo that his part cometh to the other alſo: by this the Mannor is reviued again. More ſtrong is the diſpoſition of the law then of man. *Co.* 4. 26.

Fortior eſt diſpoſitio legis quàm hominis.

The Court muſt be kept in ſome part of that which is within the Mannor, for if it be holden out of the Mannor it is void, except by cuſtome he having two Mannors, have time out of mind kept one Court for both. *Co. ſuper Lit. f.* 58.

2. In reſpect of the Lord of the Mannor and his eſtate.

2. The thing required to the making of a good grant by Copy of Copyhold Land is a good Lord: That is the party that makes the grant muſt be ſeized, (i) he muſt be in poſſeſſion in, and have a good right or title to the Mannor, of part whereof the eſtate is made. For the opening of which poynt, theſe things are to be known. That any perſon who may be a good granter in a Deed, may be a good granter of Copyhold eſtate, for this any perſon man or woman that hath a lawful eſtate in a Mannor for a time, may be a good Lord, to grant Copyholds, take Surrenders, make eſtates, and admittances according to the cuſtome of the Mannor, notwithſtanding the diſ-

ability

ability of his perſon, or exility of his eſtate: And therefore is it held that a Lunatick or Man *non compos mentis*, an Infant, an excommunicate perſon, a perſon outlawed in an Action perſonal; a Felon before his attainder by Outlawry, verdict, or confeſſion, being Lord of a Mannor, may grant Copyhold eſtates for any time according to the cuſtome of the mannor, as another man may do, and the eſtates made by them are unavoidable. So a villain purchaſer of a mannor and Alience in mortmain may make Copyhold eſtates till the Lord do make his entry. *Co. of Copyholds. f.* 89.

Non compos mentis Infant. Outlaw. Felon.

A Tenant in tail for life, years in Dower, by the curteſie, by Statute or Elegit of the mannor may make Copyhold eſtates, as well as a Tenant in Feeſimple. So may a Tenant at will of a mannor by Copyhold, or at Common Law; and this of Copyholds in reverſion as well as Copyholds in poſſeſſion: And therefore if a Tenant for life of a mannor grant a Copy in reverſion according to the cuſtome, and dye before the Copyholder; this is a good Copy in reverſion againſt all the ſucceeding Lords. Adjudge 29. *El. B. R.* Sr. *Pet. Carews* caſe

Leſſee for life, years, or at will.

If

If one ſeized of a Mannor for life, wherein are Copyholds of Inheritance, and a Copyholder doth ſurrender to the uſe of a ſtranger in Fee, the Lord may grant and admit accordingly, and this will bind him in reverſion, but if the Copyhold be onely grantable for lives, it is ſaid then the Lord upon ſurrender cannot grant more then for the life of the granter; but if the Lord of a Mannor for or during the Minority of a Ward, of which the Copyholds are demiſable for three lifes ſucceſſively and not ſeverally, if in this caſe the Copyholder dieth, the Lord may grant it being void for three lives at his pleaſure, and this ſhall bind him in the reverſion; or his heir at full age. *Calth. Read.* 50.

Quære.

If a Copyholder in Fee ſurrender to the uſe of the Lord for life, the remainder to a ſtranger in Fee, or keepeth the reverſion to himſelf, the Lord cannot grant this in Fee by Copy. *Nemo poteſt plus Juris in alium transferre quam ipſe habet.*

Grantee on condition.

So may a Feoffee or Leſſee of a Manner on condition, till the condition be broken. And yet a Leaſe for life by Deed in this caſe will be avoided: And it is held

held by ſome, that if a Leaſe be made for life on condition, and the Leſſee after the condition broken, and before entry of the Leſſor make Copyhold eſtates, that theſe are good, becauſe this Leaſe is not void; but voidable at the pleaſure of the Leſſor. *Coke of Copyhold* 89.

If the Feoffer or Leſſor after the condition broken keep court, and make Copyhold eſtates theſe are good, for the keeping of the court is an entry in law. *Calthrop. Read.* 64.

If a Feoffee of a Mannor on condition to enfeoffe another of it the next day, the ſame day after he hath the Mannor make Copyhold eſtates, they are good; for it ſufficeth if he be Lawful Lord for the time. But if a Tenant for life of a Mannor make a Leaſe for years of it, and dye, and then the Leſſee for years maketh Copyhold eſtates, theſe are avoidable by the firſt Leſſor: So if a Leſſee for years of a Mannor grant a Copyhold in reverſion, and before the reverſion happen, the Terme is expired, the grant is void, and ſo it is if the Leſſee ſurrender his Terme, and before the Leaſe ſhould have ended, the reverſion hap-

happeneth, yet the grant is not good, *Co. of Copyhold.* 88.

Gardein in Chivalry:

A Gardein in Chivalry that hath a mannor of the Wards may make Copyhold eſtates upon it. The Husband and Wife within a manno-, he hath in right of his wife, but not the wife alone, may make Copyhold eſtates, nor may the Husband alone (as it ſeemeth) make eſtates.

Husband and wife.

If the Husband and Wife in Frank marriage make Copyhold eſtates, and they be after divorſed, the eſtates made before the divorce are good; ſo if the Wife be after divorced for infancy.

Deviſee.

If one ſeiſed in fee of a mannor, by his will in writing, deviſe that his Executors ſhall ſell or make Copyhold eſtates according to the cuſtome for payment of his debts, or the like, they may make good eſtates accordingly. *Co. upon Litt.* 58. and yet if the Lord deviſe that his friends ſhall keep Courts, or make Copies and no more, this is not good. *Calth. fol.* 95.

So if one dye ſeiſed of a mannor, having a Daughter, his wife privily with child of a Son, the Daughter may make Copyhold eſtates till the Son is born.

A

A Corporation, Bishop or Prebend seised of a Mannor, may make Copyhold estates. Corps Politick.

If a Parson that hath a Mannor after Institution, and before Induction make Copyhold estates, it seems these are not good; so if after Induction he do not read the Articles, and he be after removed for this. But if he be deprived after for any crime, his grants before are good, *Co. of Copyholds f.* 89, 90. Parsons.

If the Lord acknowledge a Statute, and after make a Copyhold estate, and then it is extended, this will not hurt the estate. Tenant by Statute.

So if the Lord take a Wife, and then make copyhold estate, and then dieth, the Wifes dower will not hurt the estate, though she be endowed of the Mannor. And yet if an heir after the Lords death make Copyhold estates, and after the Mannor is assigned to his Wife, she may happily avoid this, *Co. of Copyholds* 84. Tenant in Dower.

If the Lord make a Feoffment, in Fee, Lease for life, or years of all his Copyhold, the Feoffee or Lessee may make Copyhold estates, take Surrenders, Admittances, &c.

But if the Lord grant the reversion of

one Copyhold, neither he nor the grantee, nor both of them together are able to grant any Copyhold estate of this Land.

If the Lord release all the services of the Freeholders of the Mannor, or all the Freeholders escheat, yet the Lord doth continue a good Lord, and able to make Copyhold estates of the Copyhold Lands.

In all cases where the Lord may make Copyhold estates *de novo*, he may take Surrenders, and make admittances.

Disseisor. Abator. But in these cases and these persons a Disseisor, Abator or Intrudor in a Mannor, the Heir or Feoffee of a Desseisor, Grantee of a Tenant in tayl, one that holdeth after his estate is ended as a Feoffee or Lessee upon condition, after the condition is broken, one that hath no estate at all, or no good estate, or the Copyhold is destroyed; these cannot make any Copyhold estate by way of voluntary grant, or take Surrenders, and make new grants accordingly.

Admittances. And yet it is thought that a Disseisor of a Mannor or any such Lord that hath a possession onely of a Mannor, may make admittances upon descents, or

any such like Act, and that this will bind him that hath right, *Co.* 4. 27. 8. 63, 64. 2 *part.* 58. 74. *Calthrop. f.* 98. 94 90, 91. *Co. of Copyhold.* 36. 80. 87. *Dyer* 375.

And yet if the custome be destroyed by granting away the Reversion, or where there is one Copyhold onely left, in this case he cannot make admittances, or do any thing as Lord. *Co.* 4. 27.

To make a good grant of Copyhold Land, there must be a good Steward of the Court wherein the state is granted: And as touching this point, these things are to be known:

1 In respect of the Steward of the Mannor. And of the Steward of a Court. Lunatick Infant. Outlaw.

1. Any man may be a Steward: And therefore if an Infant, Lunatick, *non compos mentis*, outlawed, or excommunicated person, he made Steward; all Acts that he doth according to his office are good.

2. He may be retained by word, as well as by Patent; otherwise it is if it be a Stewardship of the Kings Court. And any colourable authority may be sufficient to make a man a Steward to this purpose; yea it is held that a copyhold granted by an under-Steward without authority from the Lord or high

Steward is good. *Co.*4.3.*of Copyhold* 126. 27.*Calthrop. f.*73.

3. His authority is derived wholly from the Lord, whose person he doth represent, and under him in his absence he is Judge of the Court.

Judge.

4. He must do all in the Lords Name: As if he take surrenders, make Grants or Admittances, or give license to alien where he hath a special power from the Lord, or is enabled by special custome to do, he must do this in the Lords name. *Co. of Copyhold* 125.

Licenses.

5. The Steward cannot do so much as the Lord himself; for the Lord himself may make Grants or Admittances in what place he please, without as well within the Manner; but the Steward cannot do so without the Manner. And the Lord may give license to his Tenant to alien his land by Deed. But it is doubted whether the Steward can so or not in Court without a special custom of the place, or a special authority from the Lord to enable him thereto. *Co. of Copyhold f.*124.

Admittances.

License.

6. This Office may be forfeit many ways, 1. By abuser; as if the Steward burn the Court Rolls, or be corrupt

Forfeiture of Office.

Judi-

Judicature or the like. 2. Non-user; as when he is bound by his Patent to keep Court at certain times of the year without request, and the Lord be prejudiced by this omission. 3. Refuser; as if he be bound to keep Court upon demand and do not, albeit the Lord have no prejudice by it, yet it is a forfeiture *Co. of Copyhold f.* 129.

7. The Steward may appoint an Under-Steward. See for this. *Co. of hopyhold f.* 132. Under-steward.

Any one that may be a good granter in a Deed at Common Law may make a good Surrender, or grant of Copyhold Land; and as to this point these things are to be known. 1. Any body corporate, or politique, being Lord, may make Grant, or being Tenant may make a Surrender of Copyhold land. 2. Grants by Lords, and Surrenders by other Tenants, as Felons before Attaindor, Bastard, Hereticks, Lepers, deafe, dumbe, or blind men, are good. 3. He that is not a good granter, cannot make a good grant or surrender of Copyhold land without a special custome to enable him thereunto. And hence it is, That surrenders made by Infants, Aliens, Ideots, 4. In respect of the Person which doth make the grant or surrender. Lord or Copyholder. Felon. Bastard. Hereticks. Leapers. &c. Infants. Aliens.

Ideots, &c. Ideots, such as are born deafe, dumb and blind, and women covert without their Husbands are not good: And yet it is held that a woman covert being joynt Tenant with another may surrender her own part to the use of her Husband. But I doubt much of this. *Co.4.26,27. Co.1. part.f.42.of Copyholds. f.90. Calth.f.93.*

Feme covert.

4. A woman covert cannot surrender with her Husband, but she must be first examined by the Lord or his Steward, and this cannot be by the Tenants. *Calth. f.86,87.* 5. Such persons as may grant or surrender, cannot grant more than they have. And therefore if the Copyholder be a Jointenant he can grant but his own part; he that is copyholder for life only, can surrender but for his life. And yet if there be two Jointenants of a Mannor, and a copyhold escheat, and one of the Lords grant this copyhold alone; this is good to bind his companion. *Co.of Copoholds f.91.*

Jointenant.

5. In respect of the person to whom, or to whose use it is made. Any one that may be a good grantee by Deed may be a good grantee by copy, and a good copyholder. And here these things are to be known. 1. That surrender or grant of copyhold Land may be made to Lunatick, Bastard, mu

of unsound memory, person attaint of Felony, Major and Comminalty, Infant, outlawed, or excommunicate person, bondman, or feme covert: But a Monk or Friar cannot be a copyholder. And it is doubted whether an Alien born, may be a good copyholder or not. *Perk. Sect.* 52. *Co. of Copyhold.* 97. *Calthrop. f.* 52. 2. The surrender to the use of a feme covert is good, till her husband disagree to it. 3. In case of an Infant or feme covert as to the Lords service, for the Infant, it must be done by the Gardein or Prochein Amy, and for the Wife by the Husband. 4. The Lord shall retain the Land of the Ideot, or Lunatick, till he come to himself: So some say for the Infants Land till he be of age. *Calthrop. f.* 52. 65. 5. A surrender may be of copyhold Land to the use of the Lord himself, and he may have a copyhold to his own use. *Co. of Copyhold, f.* 94. doubted by *Calthrop. f.* 52 6. The Husband may surrender to the use of his Wife and by a special custome the Wife may surrender to the use of her Husband. *Co.* 4. 21. 30. *of Copyhold* 94. 7. One Jointenant may surrender to the use of another Jointenant. 8. A surrender may be

Non compotes mentis, &c. Feme covert. Lunatick. Infant. Husband and Wife. Jointenant

of copyhold land to the use of him that shall be Heir of *I. S.* or the next child of *I. S.* or next Wife of *I. S.* or to him that *I. S.* shall name; is good: for nothing passeth till admittance. Otherwise it were of such a grant by Deed, *Co. of Copyhold f.* 97, 98. Inquire. And a surrender to the use of the right Heirs of *I. S.* being alive is void. 9. A good grantee may take by Attorney. *Co. of Copyhold f.* 95. 10. A grant of Copyhold Land may be to two or more, and they shall be Jointenants, *Kitch f.* 11.

Incertainty.

Atturney.

Jointenants.

6. In respect of the place where it is done.

This Lord of a Manor himself in person may make any grant of copyhold Land, or take any surrender, or make any admittance hereof, or a surrender, or decesent in any place, as well without as within the Manner, and as well within as within the Court. But the Steward must do it within the Manner, and in Court, or it is not good. And yet by special customs of the place a surrender may be made to the Steward, or to some of the Tenants out of Court, and this is good.

7. In respect of the thing granted.

The thing granted, or surrendred must be at the time of the thing done part of the Manner; for the opening of

Which

which point, these things are to be known.

1. A Customary Mannor which hath copyholds within it, may be held of another Mannor, and be granted by copy as other Land may be, *Co. 11. 18.* So may Houses, Land, Meadows, or Pastures, and whatsoever doth concern them which is of perpetuity and parcel of the Mannor, as a common advowson, or fair appendant, the vesture of herbage of Land, Underwoods out of a great wood, and that without the soil, if they have been usually demised by copy. And if the thing granted be incertain, it may be made certain by election as in other cases of grants at common Law, *Co. 1 part. Inst. f. 58. of Copyhold 117, 118. Co. 4. 31. Co. 4 31. 37. Co. of Copyhold 120.* But such things as lye not in Tenure, as a rent Bayliwick, or Stewardship, commons or advowsons in gross, which are in corporate Hereditaments, out of which no rent can issue, are not grantable by copy; So the Lords Demesnes which were never let by copy are not grantable by copy; And yet if in this case the Lord grant them by copy, he himself cannot avoid the grant but

For the nature of it.

Incertainty.

but it will be good against him for his life. Inquire how he shall plead it: as grant by copy or by Lease patol.

Parcel of the Manor.

2. The thing granted must be at the time of the grant, made parcel of the Manor, otherwise the grant will not be good. And therefore if the Lord make a Lease for years of the reversion of one of his Copyhold Tenements: This Tenement (Inquire 1. *Just.* 325. *a Plow. Com.* 103. 6.) during this term is no part of the Manor, and therefore cannot be granted by copy in the Lords court. But this happily may be in time reunited to the Manor, and then grantable. But if a feoffment be made with, or without a Deed by the Lord of the Mannor, of one Copyhold Tenement; by this the same is divided for ever from the Mannor, and cannot be granted by copy. And yet the grant made before the severance is good. So if one grant his Mannor (except one Acre) and after grant this Acre by copy, this is not good, because at the time of the grant it was not parcel of the Mannor. *Co.* upon *Litt.* 324, 325. *of Copyhold f.* 82. *Dyer* 281.

Demised or demisable by Copy.

3. The things granted must be demised, or demisable time out of mind by copy;

copy; (that is) it is either let by copy at the preſent, or capable of being let by copy, having been ſo let and not by Leaſe time out of mind. And if when it were laſt let, it was let by copy, and be now come into the Lords hands, and he never let it for many years together by Deed or otherwiſe; this hindereth not but that it may be ſet by copy. And in this caſe it matters not how it came into the Lords hands: whether by eſcheat, or forfeiture, or ſurrender: and yet if the Lord purchaſe the Copyhold of the Tenant, or it eſcheat, ſome have doubted if it be not extinct, and ſo not grantable again. But upon little reaſon as I conceive. *Calthrop. f.* 16.86.91.90. *Co. upon Litt. f.* 58. *Calth.* 55. And if a Copyholder forfeit his Land by waſt, and a ſeiſure is awarded; but the Lord ſuffereth the Tenant to occupy the Land twenty years together without receiving rent; he may after grant it by copy. But if after ſeiſure awarded, a ſtranger enter, diſſeiſe him, and make a feoffment in Fee, and then the Lord re-enter and grant it by copy; this is not good by *Calthrop. f.* 25. *Quare*, for a diſſeiſing and feoffment, cannot alter the nature of the

the Land. If a man will overthrow a Copyhold eſtate under pretence that it hath been let by Indenture, or otherwiſe then by Copy, he muſt ſhew it to be within the time of mans memory; for if it hath been let by Copy for fifty or ſixty years, it will hardly be admitted to the contrary. *Calth. f.* 19. 85.

The Heir of a Copyholder in Fee, hath before his admiſſion ſuch an eſtate in the Land that he may ſurrender it, or bring treſpaſs; and if he die, his Heir ſhall have it by deſcent, *Dyer.* 291, 301. *Co. of Copyhold* 4. 21.

If a Copyholder ſurrender his Land, to the intent that a ſtranger may have a rent out of it; this is not a good Copyhold rent, by *Calthrop f.* 92.

8. In reſpect of the Manner and Order of the grant. And of Grants, Surrenders Preſentments and Admittances.

No Copyhold land can paſs from the Lord to his Tenant, nor from one Tenant to another, but by way of grant, or ſurrender in the Court of the Mannor, according to the cuſtome of the place. And as touching this point theſe things are to be known.

1. In ſome grants a ſurrender is ſufficient without Preſentment or Admittance: In ſome an Admittance without a Surrender or Preſentment: In ſome a Sur-

Surrender and Admittance are both neceſſary, and in ſome a Surrender, Preſentment and Admittance are all neceſſary. As if the Copyholder ſurrender to the Lords uſe, there needs no admittance. And if the Lord make a voluntary grant of a Copyhold in his hands, no Surrender is needful, but admittance only. If the Copyholder ſurrender in Court to the uſe of a ſtranger, beſides the Surrender admittance is requiſite. And if the Surrender be made out of Court to the Lord himſelf, which the general cuſtome will warrant, or into the hands of the Bayliffe, or of two of the Tenants, (which by ſpecial cuſtome only is warrantable) in this caſe there muſt be beſides the Surrender, a true Preſentment of the Surrender in Court by the ſame perſonts, into whoſe hands the Surrender was made, and an Admittance of the Lord according to the effect of the Surrender and Preſentment. *Co. of Copyhold Sect.* 38.

2. A grant may be of Copyhold land in Fee-ſimple, Fee-tail, for life, or years, in poſſeſſion or reverſion, as the cuſtome expreſly or interpretatively will warrant it. *Co. of Copyhold, Sect.* 47. But the

Fee-ſimple, Tail Life, Years,

the Lord without a custome cannot grant a Copyhold in reversion. 15. Co. 8. R.

3. If the Lord having Copyhold land in his hand, grant it by Deed or Fine, to hold at will, according to the custome of the Mannor, this is not good to make a Copyhold estate. *Calthrop. f. 47.*

Antient Rent.

4. In all good grants of Copyhold estates, it seems the antient rent must be reserved not only in quantity, but in all beneficial qualities. And therefore it is held, that if the antient rent were in gold, and the new be in silver, or the old were payable at four days, and the new be payable at two days; these are not good Copyhold grants. But this (it seems) is to be understood of Copyholds of Inheritances, and Admittances into them. *C. of Copyholds. f. 109, 110. Calth. f. 88, 89, 81.*

Surrender.

A Surrender is the giving up of the land by the Tenant to the Lord according to the custome: and this is entred in this manner: To this Court came *A.* of *B.* and hath surrendred in the same Court one messuage, &c. into the hands of the Lord to the use of *C.* of *D.* and his heirs, or the heirs of his

his body issuing or for terme of his life, &c. and hereupon came the aforesaid *C.* of *D.* and took of the Lord in the same Court the Messuage aforesaid, &c. To have and to hold to him and his heirs, or to him and the heirs of his body issuing, or to him for term of life, &c. at the will of the Lord according to custome of the Mannor, doing and paying therefore the rents, services, & customes therefore due, and accustomed, and he giveth to the Lord for his fine, &c. and hath done fealty to the Lord, &c. Herein are many things to be known.

1. This may be absolute, or upon condition; and it may be rendring rent on condition of re-entry for not payment. *Coke* 4. 21, 30. And if he enter for the condition broken, it is in him as at the first without admission.

2. It may be to the Lord himself, or his Steward, or his Tenants, or his Reeve or his Bayliffe, as the custome is. And it may be to the Lord out of Court, but it cannot be to the Steward out of Court without a special custome to enable it. *Mich.* 37. & 38. *Eliz. Brights case.* Customs.

3. It is in some cases necessary, and in some cases not: See for this.

4. When

4. When is is necessary it must be made: First by a Copyholder, and Admission, otherwise it will not help. Secondly, it must be made to the Lord, that can make Copyhold estates, or some other to his use as the custome is. Thirdly, if it be out of Court, it must be presented at the next Court, according to costome. Fourthly, the Lord must admit accordingly; or else (as some say) the surrender is void, *Kitch* 82. *Co.* 4. 27. *Co.* 1. *per.* 61, 62. *Calthrop. f.* 97. Fifthly, this cannot well be made by any other word, but by the word *Surrender*. And therefore if it passe in the Cort by the word *give*, *grant*, *bargain* or *sell*, this will not passe it, but the Heir of the Copyhold may avoid it. *Ca. of Copyhold* 103. And yet if a Copyholder come in to the Court and desire the Lord to admit his son into his Copyhold, some think this is a good surrender to the use of his son. *Calthrop. f.* 57. But if the Tenant come to the Lord and tell him that he is willing for his sons preferment, that he shall have his Land presently, and desire the Lords agreement; who doth so, it is said this is no good Surrender. And yet if the Homage do

words of Surrender.

after

after present it for a surrender, it is more questionable, *Calth. f.* 59. If a Copyholder in the presence of other Copyholders of the Manor say he is a content to surrender his Copyhold to the use of *I S*, this is not a good surrender. But if he say he doth surrender into the hands of the Lord to the use of *I S*. if the Lord will thereunto agree; this is a good surrender whether the Lord will or no. So if the Tenant resign his interest in the Court into the Lords hands, therewithal for him to do what he will; it seems this is a good surrender. If the Copyholder say in Court, he will be no longer Tenant to the Lord, and this be Recorded this is no surrender. If a Copyholder for life, take a new estate for life; this is a surrender of his first estate for life: but if the second be by Deed, Inquire *Calth.* 59.

5 A surrender may be made of a Copyhold by Atturny, if there be no custome in the place against it, it is not of necessity that the Copyholder be present in Court. But if this power be by special custome, it cannot be done by Atturney: As if a Copyholder have a power to make a Lease for twenty years

Atturney.

Custome.

Infant. after his death, or an Infant have pow
to make a Lease at years of discretio
or a man may surrender out of Co
to the Tenants. These things cannot
done by Attorney, *Co. of Copyhold* 9
Co. 9. 76.

6 If a Copyholder in free surrend
to the use of himself for life, and after
the use of *R.* his son for life, and af
to the use of his last Will; this is a go
surrender, and the estate may be m
accordingly, *Co.* 4. 23. But a surrend
after a mans death to the use of a ma
last Will, is not good. If a Copyhold
in Fee surrender, to the intent that
Lord shall re-grant to him for his lif
the remainder to his wife, till his s
come to 21 years of age, and after
his son in tail; this is a good surrend
and is to be executed accordingly, *D*
Jointe- 251. And if two Joyntenants be,
nants. one surrender his part out of Court,
to the Lords hands to the use of his
Will, and by his Will deviseth his part
a stranger in Fee, and die, and at the
Court this is Presented; this is a go
surrender, and by this the Joynture
severed, *Co.* 1. *part.* 59.

7 If a surrender be to the Lord
nerally

nerally, without saying to whose use; it is good enough, *Kytch.* 81.

8 If the Copyholder surrender to the use of another, and the Lord grant it to the *cestuy que use*, not naming the surrender; this is good enough by *Calthrop. f.* 99.

9 In a surrender it matters not whether the party to whose use it be, he precisely expressed, if by any circumstance he may be known. And therefore a surrender to the Archbishop of *Canterbury*, *Mayor* of *London* next of his kin, or next of his blood, his brother, his sister, or his son, may be good, and it may be made certain by averment. So if it be to a man's wife without naming of her, or to the high Sheriff of *Norfolk*. But a surrender to the use of ones cousin or friend, is void for incertainty. So if it be to the use of three or four of *Dale*, or to the use of *A. B.* or *C. D.* *Co.* 4. 29. *of Copyhold* 96.

Incertainty.

14 The surrender binds the Land immediately, so as the Lord cannot avoid or prevent the intention, nor prejudice him that is to have it by an Act that he can do. And yet it is rather a manifesting of the parties intention, than a pas-

The operation of a Surrender.

sing of an interest. For till admittance the surrenderer is Tenant to the land, and shall receive the profits to his own use; and he must perform the services. And yet he cannot pass the land to any other, or make it subject to any incumbrance of his: nor hath the Grantee any interest to punish trespass, surrender, &c. And yet he cannot be defeated of it: And he may compel the Lord to admit him, *Co. 4. 26. 29. of Copyhold fol. 106.* If I make a surrender to the Lord, to the intent, that he shall grant the land to *I S.* and the Lord refuse to grant the land to *I S.* accordingly: in this case I may re-enter upon the Lord: But *I S.* hath no remedy, as in case where the surrender is made to the use of *I S.* by *Calth. f. 61.*

Countermand.

11 A surrender is not countermandable by the surrenderer. And yet if a Copyholder languishing in extremity, surrendreth his land out of Court to the use of his cousin in consideration of blood, or to the use of his son in consideration of natural love, and after recover before Presentment, happily this may be revoked. But if it be upon good consideration, as for payment of debts, and for

any

any sum of mony paid, though it be made out of Court, yet it is as binding as if it were made in the Court, *Co. of Copyhold* 106.

The Presentment made out of Court must be afterwards duly presented at the Court according to the custome of the Manor. In which these things are to be known. Presentment.

1 This Presentment is the Information of men, sworn to the Lord or Steward touching some things done out of Court.

2 This is either general (*i.*) of all things, and by the whole Homage; or it is special (that is) by some Tenants, or of one, or of some things onely.

3 This by the general custome is to be made the next Court after the surrender, but by the custome of some Manors may be the second or third Court after the surrender; and if it be not then presented according to the custome, it is void, *Co. 1. part. 61, 62.* Custome.

4 This also must be made in all things according to the surrender; otherwise it is not good. And therefore, if the surrender be conditional, and the presentment absolute; all is nought: and yet if the surrender be rightly

Presented, and the entry of the condition be omitted by the Steward, this upon proof may be holden. *Co. 1. part. 61, 62. of Copyhold* 107.

5 No death will hurt the Presentment, and therefore if the surrender die, yet the Presentment may be made after his death. And if he to whose use the surrender is made, die before Presentment, the Presentment may be made thereof after his death, and thereupon his heir shall be admitted. So if *I. S.* surrender to the use of *A.* for life, the remainder to *B.* and *I. S.* die, and *A.* die before the presentment made, and after the Presentment is made, in this case he in remainder shall be admitted. So if two surrender to the use of two jointly, and one of them die before Presentment; in this case the other shall be admitted to the whole. So likewise if the Tenants that take the surrender die, the Lord may notwithstanding upon proof of it, take in the Tenant by admittance. *Co. 4. 29. of Copyhold, Sect. 40. fol. 107. Co. 4. 28, 29.* And yet if a surrender be made to the Lord in the presence of Tenants out of Court, and there the Lord doth grant it; but he dieth before this

this is presented, or the Tenant admitted; this it seemeth is not good, *Calthrop* 46.

To the perfection of the Copyholders estate, Admission, as that without which no estate passeth by the surrender, is necessary. As touching which, these things are to be known. Admittance upon Grant or Surrender.

1 This is the receiving of the Tenant into the Copyhold by the Lord or his Steward, according to the custome of the place. And it is thus entred: At this Court *I.S.* prayeth to be admitted, &c. whom the Lord by his Steward hath admitted, and whereupon he is admitted Tenant, *Co. of Copyhold* 125. *Calthrop f.* 62.

2 Some make it express, and implied (*i.*) by acceptance of rent, &c. *Calth. f.* 62. It is also either upon a voluntary Grant, or Surrender, or upon a Descent, *Co.* 1. 140.

3 It is a judicial act of the Lords, and in case of a voluntary admittance, he is but an Instrument, and may be compelled according to the custome to do it; for he is not esteemed as owner to any purpose, and therefore he cannot prejudice the surrender in any case. And therefore as to this Act the Lords Title

to the Manor, whether he have it by right or wrong, is not much considerable. *C. of Copyhold*, 110.

4 This is necessary, for upon voluntary grants and surrenders, the Tenant hath nothing in the land till admittance, and upon dissents he is not perfect Tenant till his admittance, *Co. Copyhold* 112, 113. Yet in case of a surrender to the Lord's use no admittance is needful; and where there is an implicite admittance, there needs no express admittance; and where Tenant in possession is admitted, he in the remainder on the same Copy need not to be admitted: also the surviving Joyntenant where they were both admitted at first, need not to be admitted; and yet the heir of a Copartner must be admitted into moity, *Calth. f.* 63, 64. And he that enters for a condition broken needs no admittance, *Calth. f.* 61. If a Copyholder for years die, the Executor needs not be admitted. So neither the husband of the wife Copyholder for years after her death, *Calth. f.* 95.

5 The Steward it is said may do it out of Court any where within the Mano, except there be any custome against it,

it, *Kytch.* 82. *Co. of Copyhold*, 123.

6 The admission must pursue the surrender, yet in some cases albeit it do differ from it, it is good enough. And therefore if the surrender be to the use of *I S.* for life, or to the use of *I S.* generally, and the Lord doth admit him in Fee; this is a good admittance for his life onely. And yet if the surrender be on condition, and the Lord omit the condition, it is all void, *Co. of Copyhold*, 112. So if the surrender be to the use of *I D* alone, and the new grant and admittance are to *I D* and *I B*, this is good for *I D*. and void for *I B*. *Co. of Copyhold*, 111, 112. So if the surrender be reserving 10*s.* & the admittance be reserving 20*s.* it is good for the 10*s.* But if the surrender be reserving 20*s.* and the admittance is reserving 10*s.* it is all naught; the contrary seems to be deduced from the case of *Westwick* 4 *rep.* 28. *a* & *b*. So if the surrender be to the use of *I S.* and the Lord admit *I G.* and after admit *I S.* it is said in this case *I S* and *I G* shall have the land together. But if the surrender be to the use of *I S* alone, and the Lord admit *I G* alone; this is all void, *Co.* 4. 28. *of Copyhold*, 111.

If

If the ſurrender be to the uſe of *A.* for life, the remainder to *B.* and *A.* is admitted; this is good for him in remainder, *Co.* 4. 23, 24.

7 The admiſſion muſt be according to the cuſtome, yet if the cuſtome will warrant the womans eſtate during widowhood onely, and the Lord admit for life, or the Lord admit not reſerving the antient Rent in quantity or quality; this will not prejudice the heir, but that he may avoid it, *Co. of Copyhold*, 109.

Rent.

8 Admittance cannot make a bad eſtate good, nor change the cuſtome, *Kytch.* 82. 86. See more of this after at Fine, *Numb.* 9. 10.

Upon a Deſcent.

The heir of a Copyholder in Fee hath ſuch a poſſeſſion, and is ſuch a Tenant before admittance, that he may (paying the Lord his Fine, which may be afterwards) enter, take the profits, ſurrender or bring an action of Treſpaſs; and if he die, the heir ſhall have the land, and there ſhall be a poſſ. of the brother upon his entry. And yet it hath been doubted if a Copyhold deſcend to a feme Covert, and the husband take the profits, but ſuffer a Court day to paſs without admittance, whether he ſhall be Tenant by

by the Courtesie or not, *Dyer* 291, 292. *Walth*, 60. But in admittances upon a grant or surrender; as if one surrender to the Lord to the use of *I. S.* and the Lord grant it accordingly, it is otherwise; for there the Tenant hath nothing till admittance. But the heir of a Copyholder shall not be sworn of the Homage, nor bring a Plaint in the nature of an Assize till admittance. So that an admittance in this case is rather for the benefit of the Lord to help him to his Fine, than to strengthen the Title of the heir. But the Heir is in most places bound under pain of forfeiture of his estate, or some other great penalty to be admitted, and therefore he must be admitted. *Co.* 4. 23. *Dyer* 291. *Co. of Copyhold* 113, 114, 117. *Calthrop fol.* 62.

9 Upon every admittance there is Fealty due to the party admitting, by the party admitted; a thing inseparable to the person, which cannot be done by Deputy; and yet if the Lord will accept it, or dispense with it altogether, it is well enough, *Co. of Copyhold, fol.* 95. 10. There is also a Fine due upon every admittance: See after. Fealty. Fine.

There is in most places a Ceremony used

used in the passing of the lands. In some places there is the giving and taking of a turf and a twig; in some places the giving and taking of a glove; in some places the giving and taking of a straw; in some places the giving and taking of the hand; but in most places the Ceremony is, by giving and taking of a rod. And albeit the grant or surrender may be good without this Ceremony, yet it is not safe to omit it. This the Copyholder that doth surrender doth use to give to the Steward or Bailiff to deliver over to the party, to whose use the surrender is made in the name of seising: And herein custom of place is to be observed.

How Grants and Surrenders shall be taken.

1 If a surrender be made to the Lord in general, without expressing to what use, it shall be taken to the Lord's use. *Kitch.* 81.

2 The same construction (for the most part) which the Law maketh upon words in a Deed, it will make upon a Copy. And therefore it is that a Copyhold estate made to one and his heirs males or heirs females, is accounted a Fee-simple, though it be otherwise in the Kings grant, *Co.*4.29.*of Copyhold*, *f.*139. So of a grant to one and to his blood inheritable,

Fee-simple.

heritable, or to a Mayor or Commonalty or other Corporation, where no eſtate is named. So if I ſurrender to one and his heirs, and he reciting this doth ſurrender it to my uſe in the ſame manner as I ſurrendred to him: So if I ſurrender to *I S.* as large an eſtate as he hath in the Manor of *Dale*, and he hath a Fee-ſimple in that Manor; in all theſe caſes the Law will conſtrue it to be a Fee-ſimple, *Co.* 4. 29. *of Copyhold*, 132. If a Copyhold is ſurrendred to a man and to his ſeed heritable of the body, or to a man and to the heirs of him procreated, or to a man in Franck-marriage with his wife: in the firſt of theſe caſes an eſtate tail reſteth without the word *heirs*, in the ſecond without the word *body*, and in the third without either, *Co.* as before. Fee-tail.

If a Copyhold be granted to a man in Fee-ſimple, or to a man and to his blood for ever, or to him and his aſſigns for ever, without the word *heirs*, that is only an eſtate for life. So if ſuch a grant had been to an Abbot and his ſucceſſors: So to *I S.* and his heirs ſo long as *I S.* ſhall live. And yet if the grant be to *I S.* and his heirs, ſo long as ſuch a tree ſhall grow in ſuch a ground; this For life.

ſhall

shall be a Fee-simple, &c. as before.
this land be granted to two men, and
heirs, without *their*: by this no In-
Jointenants. tance is made, and they are Joyntenants
for life onely. Yet if it be granted to
S. and heirs without *his*: hereby *S.*
hath a Fee-simple, and not an estate
tail. And if it be granted to a man and
his children of the body: this is no estate
tail for lack of the word [heirs] &c.
before.

If the Grant be to a man and the heirs
males of his body, by this is made an
estate for life.

If this Land be granted to three, and
have successively; by this they are Joynt-
nants, and shall take together, unless the
custome (as in most places it doth) or
otherwise construe it, &c. as before.

If there be Copyholder for life, the
remainder to another in Fee, and the
Copyholder for life, doth surrender
the use of another in Fee, and the Lord
admit accordingly; by this there pas-
seth an estate for life onely, &c. *of Co-*
hold f. 91. So if the surrender be to the
use of a stranger for life, and the Lord
grant in Fee; this is good for life. *Co.*
Calth. f. 63. So if the Lord grant a Copy-
hold

pyhold for life, where an eſtate in Fee is warrantable; and this Grantee doth ſurrender in Fee to the uſe of a ſtranger, and the Lord admit him accordingly; by this, it is ſaid, the Fee doth not paſs, *Co. of Copyhold, f.* 92. If the ſurrender be to the uſe of a laſt Will, and the ſurrender deviſeth it to two, and one of them onely is admitted according to the Will; by this both of them ſhall have it, *Co. of Copyhold*, 98.

If one Copyhold be between two Joyntenants in Fee, and one of them ſurrender his part out of Court to the Lord according to the cuſtome, to the uſe of his laſt Will, by which he doth deviſe it to the uſe of a ſtranger in Fee, and dieth, and this is preſented at the next Court: hereby the Joynture is ſevered, and the Deviſee muſt be admitted to a Moyety of the Lands, *Co. upon Litt.* 59. If a Copyholder ſurrender to the uſe of his wife for life, the remainder to the right heirs of the husband and wife; the wife dies, and the husband doth ſurvive: In this caſe if he have no iſſue by his wife, his heir ſhall have it, by the opinion of *Althrop, f.* 82. And yet if the wife have iſſue by another husband, it is doubted. Deſcent.

And

And it is said, that the husband and his heirs shall have the land; yet if the husband had first two sons, the heirs of the husband, and the heirs of the wife shall have the land in common, after the decease of the wife, *Calth. f.* 83. If land be given for life, the remainder to two men and their heirs; in this case they cannot have one heir, and therefore if the Tenant for life die before them in remainder, they shall be Joyntenants. But if neither of them be alive when the Tenant for life dies, then the heirs of them in remainder shall hold in common, *Calth. f.* 84.

If a Copyhold be surrendred to the use of *I S* and his heirs, till he marry *A G*, and then to the use of them two in special tail, this is good, and shall enure accordingly, *Calth f.* 22.

If a Copyholder surrender to the use of a stranger, in consideration that the stranger shall marry his daughter before such a day; in this case if the marriage succeed not, the stranger shall take nothing by the surrender. But if the consideration be, that the stranger shall pay such a sum of mony at such a day; albeit the mony be not paid, yet the

the ſurrender is good *Calthrop fol.* 37.

If the Copyholder in conſideration of 20 *l.* to be paid by *I.S.* doth make a ſurrender of his Land to *N. R.* this ſurrender ſhall be to the uſe of *I.S.* and not to the uſe of *N. R.* But if in the Copy the uſe be expreſſed to *N. R.* and no conſideration mentioned, the uſe expreſſed ſhall ſtand againſt any conſideration to be averred. *Calth. f.* 37.

If a Copyholder ſurrender his Land to the uſe of *I.S.* ſo that *I.S.* pay 20 *l.* ſuch a day if he pleaſe; this is an abſolute, not a conditional ſurrender, *Calthrop f.* 39.

The payment of the Fine by the Tenant is neceſſary to the continuance, but not to the creation of the eſtate, for the eſtate is made perfect without the Fine-payment: but for the more full underſtanding hereof, theſe things are to be known.

9. In reſpect of the payment of the Fine: and of a Fine.

1 A Fine is a ſumme of money to be paid to the Lord for an income into the Lands.

2 This in ſome places is certain, and in other places is uncertain and where it is certain the Lord cannot increaſe it.

3 By general cuſtome this is to bee Cuſtome.

Admittances.

paid only upon admittance, but it may be also by special custome upon licence granted to demise by Indenture.

4. The Fine is to be paid upon admittances in these Cases following (*viz.*) Where the Lord after a Copyhold come into his hands, and he make a voluntary admittance, and where a Copyholder doth surrender to the use of a stranger, and the Lord doth admit him to whose use the surrender is made, and where a Copyhold of Inheritance descendeth, and the Heir is to be admitted; So where the wife is to come in a Tenant in Dower, or the husband as Tenant by the curtesie: and so also when one doth enter as a general or special occupant. And so also where the Copyhold Lands of a Bankrupt are to be sold upon the *Stat. of* 13. *Eliz.* 1. in all these cases the Tenant is to be admitted, and to pay a Fine. So also if a Copyhold be surrendred to the use of one for life, the remainder to the use of another, and the Tenant for life die; he in remainder must pay Fine upon his admittance. So where the Habend. of the grant is successive, and one of them dye, the next must be admitted and pay Fine. So if

two

two Copartners or Tenants in Common be, and one die, and the whole descend to the other, there must be Fine upon the admittance. But if there be two Joint-tenants, and one of them dye, and the other come to the whole by Survivourship; or one take a wife, a Copyholder in Fee, or marry with the tearmer of a Copyholder; or a Copyholder be disseised, and then enter upon the disseiser or recover by plaint in the nature of an Assise; or a Copyholder in Fee surrender for life, reserving the reversion, and the Lessee for life dieth; or a Copyhold be granted on condition, and the condition is broken, and the Grantor reenter-eth; or the Lord enter upon a Villein, that hath purchased a Copyhold; or the Bayliffe is by custome to have the Wardship of an Infant: in all these cases there needs no admittance, and therefore no Fine is to be paid. And yet if a Copyholder dye seised, and a stranger abateth, and the Heir recovereth by plaint in the nature of an Assise of Mortdancester: upon this recovery an admittance is to be made; and therefore a Fine is to be made, *Co. of Copyhold Sect. 56. in toto.*

5 If the Lord use to take for his Fine sometimes 2 *d.* sometimes 4*d.* sometimes 6 *d.* an Acre; this is so incertain, that it shall be said to be arbitrary *Calth. f.* 25.

10. In respect of entry in the Rolls of the Court.

The Steward of the Court must take care to record and inrol all the conveyance of estates. For some have held, That if the Lord in open Court grant a Copyhold estate, and no entry is made he of it in the Court Rolls, that the grant is not good, and that no collateral proof will make it good, *Calthrop f.* 47. But if the Tenant have no Copy, or lose his Copy, the Roll of the Court is a good evidence. And if these Rolls be lost, it is thought clearly it may be supplyed by proof. *Calthrop f.* 47. And yet if By-lawes be made and entred upon the Rolls, and the Rolls be lost, the By-laws are gone, otherwise it is of Customes and Priviledges inrolled and lost. *Idem.*

By-lawes. Customes.

11. In respect of custome: And of Customes.

That the grant made by Copy of Court Roll may be good, it must be made according to the Custome of the Manor, and that custome must be according to Law: but as touching customes these things are to be known.

Custome what?

1 A Custome is a Law or right not written, which being established by long use,

uſe, and the conſent of our Anceſtors hath been and is daily practiſed.

2 Though Cuſtome, Preſcription, Uſage and Limitation be much of affinity, and one of them be taken for another, yet they differ much; For,

1 Cuſtome can have no beginning ſince mans memory, but Preſcription may. Preſcription.

2 Cuſtome toucheth many men in common; that they by continuance of time have gotten a right, and this is alledged thus, That in ſuch a place is ſuch a Cuſtome; but Preſcription toucheth this or that man, when he by continuance of time hath obtained a right againſt another man, and this is perſonal and alledged in the name of ſome perſon incertain thus. That he and his Anceſtors, and thoſe whoſe eſtates he hath time out of mind, *&c.*

3 Uſage is the efficient cauſe or life of both, for both loſe their being if Uſage fail, *Calthrop f.* 17. *Co. of Copyhold Sect.* 33. Uſage.

4 Limitation is where a right may be obtained by reaſon of a non-claim by the ſpace of a certain number of yeares, differing in Account of Time Limitation.

from Custome and Prescription.

1 The measure whereof is so long as mans memory cannot remember the contrary, (that is) that no man alive hath heard or knoweth any thing to the contrary. But limitation hath a certain time of beginning and end.

2 Customes are either general, as which is part of the Common Law used in all places alike; Or particular, which are used only in some places; as in *Kent*, *North Wales*, *Gavelkind*, *Burough English*. And these again are either disallowing what generall customes doe allow: As that the Copyholder shall not sell his land to a stranger, and compel the Lord to admit him, till he hath first offered it to the next of blood, or stock of kin, or next neighbour from the sun rising, who giving as much as the party to whom the surrender is made shall have it. Or else they be such as do allow what general customes do disallow; as for a Copyholder to let his land by Deed for a longer time then a yeer without license, which by the custome of some Manors he may do: Custome from certain cause reasonable used takes away the Common law, *Co. of Copyhold Sect.* 33.

Consuetudo ex certa causa rationabili usitata privat communem legem.

4 To

4 To know what cuſtomes are good and what not, theſe rules muſt firſt be taken. Firſt, Cuſtomes and Preſcriptions muſt be reaſonable, 2 *Ed.* 4. 24. Secondly, they muſt be according to common right, 42 *Ed.* 3. 4. Thirdly, muſt be upon good conſideration, 5 *Hen.* 7. 9. Fourthly, they muſt be compulſory, not voluntary, 42 *Ed.* 3. *Avowry.* 66. Fifthly, they muſt be certain, 13 *Ed.* 3. 4. Sixthly, they muſt be beneficial to them that claim them, 31 *Ed.* 3. Preſcription. 40. 28. Seventhly it cannot help a man to that which is gained only by matter of Record. Eighthly, it cannot extend to thing newly created. Ninthly, they need not be uſed daily and hourly, but according to time and occaſion, *Calthrop* 22. 21. Tenthly, Non-uſer, as if the Lord hath been uſed to have work-dayes, and have not had them for twenty yeers together; this will not hurt the cuſtome, *Calthrop f.* 25. Eleventhly, cuſtome may oppoſe the Common Law, but not a Statute Law, *Calth.* 87.

Hence it is that theſe following cuſtomes are not allowed to be good, (*viz.*) That no Tenant ſhal uſe his Common by putting in of his Cattle in fields ſowen For Common.

sowen after severance of his Corn till the Lord put in his Cattle for he may choose if he will to put in at all.

To have a Fine for a trespasse, or other cause.

That if any mans beast be taken damage feasant upon the Lords Demesnes, he may keep them till the owner give him such amends as he shall please, for this is to make him judg in his own case. And yet if the custome be that if the Copyholder trespass him, and it be presented at Court, that this shall be a forfeiture, is good, *Calthrop. f.* 29.

That every Copyholder shall pay the Lord a certain sum of money for every Court he keeps. Or that he shall never keep a Court till when it please him, for this Court being to do Justice must be *gratis*. And yet such a custome alledged to be for the keeping of an extraordinary Court is good.

That every stranger that shall make a Pound-breach, shall pay 1 *l.* and yet it is held that a custome laid, that every Tenant, which shall make a Pound-breach shall forfeit 5 *l. Calthrop f.* 31.

That every one that rides through the Kings high way within the Manor must pay the Lord such a summe of money. And yet if it be that every one that

hat passeth over such a Bridge within he Manor which the Lord doth maintain; it is good enough.

That every Copyholder that doth marry or shall marry his daughter shall pay so much to the Lord for a Fine. And yet where the custome doth admit the husband Tenant by the Courtesie, and wife to be Tenant in Dower, or to have widowes estate of the Copyhold, that in these cases they shall pay a Fine, is a good custome.

That every Copyholder shall hold his land without paying any rent or service to the Lord. And yet it is held a good custome to prescribe by fealty for all manner of services, is held good, *Calthrop* 29. So a custome may be good to exempt one Tenant from that which all the rest of the Tenants do bear, and good, *Calthrop f.* 77.

That every Copyholder shall give to the Lord so much in the time of war every moneth to bear his charges. And yet if it be that he shall pay so much to the Lord, for this purpose it is good; the reason of the difference is, because a payment is compulsary, a gift voluntary. Incertainty.

That

That when one Copyholder dieth another of the Copyholders (and not which) shall hold the land for the yeer following, And yet if it be, that if a Copyholder dye without heir, the eldest Tenant of that name within the Manor shall have the Land; this is good. *Calth. f.* 31.

For Fine. That the Lord shall have for his Fine 2 *d.* rent an Acre, and when he pleaseth 4 *d.* an Acre. And yet happily if the Lord prescribe to have 2*d.* an Acre rent in time of peace, and 4 *d.* in time of War; this may be certain enough good.

To doe waste. That a Copyholder shall cut down what timber he pleaseth, fire, pull down or destroy the houses, or let them fall. And yet happily a custome that the Tenant shall cut down more then ordinary, or that the Tenant shall have necessary fireboot, &c. that he may sell underwoods and shrowds, may be good.

To pay a Fine. That every Tenant shall pay a Fine at every alienation of the Lord. And yet if it be that every Tenant shall pay a reasonable Fine at the Lords death: or that a Fine shall be paid at every death or alienation of the Tenant: or that the Lord shall admit without Fine, if the usage

uſage have been ſo, *Calthrop. fol.* 40. Theſe and the like cuſtomes are allowed to be good: but theſe following cuſtomes are diſallowed, *(viz.)*

That the wife of a Copyholder ſhall during her life or widowes eſtate-hold all the Land.

That the Tenant ſhall have Common in the Lords waſts. To have Common.

That if he that hath right, claim not the Land within a year and a day after the Anceſtors death, he ſhall loſe it: and yet this will not bind an Infant.

That the Lord may grant for one, two or three lives in revertion.

That a ſurrender may be made to the Bayliff or Reeve, or two or more Tenants out of Court.

That the ſurrender made by the Tenant in tail, ſhall bar the iſſue in tail. To make a Surrender.

That the Lord may keep his Court at another of his Manors.

That the Lords Steward or Bayliff may grant Copyhold eſtates to the Tenants.

That a Feme Covert may grant her Copyhold eſtate to her husband by ſurrender.

That an Infant of yeers of diſcretion may ſurrender.

That

That the new Tenant shall pay a Fine to the Lord, as he can agree upon his admittance.

That Proclamations be made three Courts one after another, and if the heir come not, and pay his Fine for admittance he shall lose the Land, *M. 7. Jac. B. R. Lyfords case.*

That the Copyholder may let for longer time then one yeer without Licence.

To surrender out of Court.

That an Inheritance shall passe by surrender in the Lords Court without his leave, and be delivered over by the Bayliff to the Feoffee according to the Deed to be inrolled in Court.

If the Lord prescribe, that whosoever take a distresse within his Manor, he must put him in his Pound for a time; this is not good, for it is no benefit to him. But if he add further, that the Lord is to have so much for the impounding it is good.

Prescription.

The Lord may not prescribe to have Felons goods, Fugitives goods, Deodands, because they cannot be forfeit till they appear of Record: but Waifs, Estraves, Wreck, and such like things, may be gained to the Lord by prescription,

for

for they may be gained by usage without matter of Record.

That the wife of the Copyholder shall be Tenant in Dower, husband Tenant by the curtesie, (an Inquire may as well be made of this, as of entailing Copyholds; since this Tenant by *Elegit, &c.* commenced by Statute which is within the memory of man) or a stranger Tenant by Statute Merchant, (and so no customs can be of it, *Co. of Copyhold Sect.* 47.) or staple of the Land in the hand of the Copyholder, are good customes, *Co. of Copyhold* 136.

That the Tenant may make a Lease for twenty years after his death, is a good custome, *Co. of Copyhold f.* 98. To make Leases.

That the Tenants shall pay the Lord every fourth year the double rent, and every sixth year a half years rent, is a good customes so that when they sow their land, they shall pay their rent in corn, and when they feed it in money, is a good custome, *Calthrop f.* 25. To pay Rent.

All customes, especially such as are in derogation of the common Law are taken strictly, but not litterally. And therefore where a custome is that a man may grant in Fee; by this he may grant in How they shall be taken. To make estates.

in tail or for life. So where the custome is, that the Lord may grant for life; by this he may grant during widowhood. He who may doe which is more, may doe which is lesse, not convertible. But where the custome is, that the wife of the first taker shall have her widowes estate, by this the wife of the second shall not have it, *Coke.* 4. 30. *of Copyhold* 70. 77.

Cui licet quod majus, non debet quod minus est non licere; sed non è converso.

If the custome be, that the Copyhold Land may be leased by the Lord Surveyor, or deputy Surveyor; the Lord cannot by his Testament appoint and authorize one to keep Courts and make estates, *Co.* 4. 30. *of Copyhold.* 35.

To pay money.

If there be a custome that for every house in the Manor two shillings Fine shall be paid: if the Tenant maketh one house into two houses, or maketh a new house, no Fine shall be paid for these new houses. So if I have estovers appendant to my house, and I build a new house, I shall not have estovers to this new house. But if I only change the rooms, my estovers doe continue. So it is of a water course to a Fulling-mill, converted to a Corn-mill, or of a light in a Hall, converted to a Parler. *Co.* 4. 32. *of Litt. Sect.* 74.

Common.

The

The droof of these customes, and due President, as to prove Leases, may be made for longer time then a year: to shew one Lease, is no proof of a custome. Proof of it

In custome there is *User*. First, when according to time and occasion it is used. Secondly, *Non-user*, i. when for want of time and occasion through negligence or forgetfulnesse it is not used: this will not hurt the custome. And therefore if there be a custome that the Tenants shall do work for the Lord yearly, and it hath not been done for divers years, yet the custome remaineth, if any man living can remember it hath been done. And so it is, if one have a Market one day a week, and do not keep it. Thirdly, if the Tenant use to pay the Lord when they sow their Land rent, corn, and when they feed it, money, or to pay the Lord every fourth year a double rent, and every sixth year a half rent: this is a good *Interuser*. Fourthly, Abuser is where the Tenant doth put in other cattel or more cattel in the Lords soil then he ought, this doth not destroy the custome, but this is Fineable at the Lords Court. And Lost. For payment of rent.

so

so it is if the Lord have a Faire or Market one day of the Week, and he keep it another day; this is not a forfeiture of the custome. And yet if he have it two days, and keep it three dayes, this is held to be a forfeiture, *Calth. f.* 43, 44, 45. See more to this in the next question.

Chap. 20.

When and how a Copyhold shall be said to be destroyed or suspended.

For the clearing of this point, these things are to be known. 1. The Copyhold is destroyed and gone in all these following cases. 1. When the Copyhold is either by Act of Law, or Act of the Lord, or the Copyholde, or Tenant become not demisable by Copy. As for example, if the Lord by Fine or Feoffment, or otherwise by Deed grant the reversion of one or some of the Copyhold Tenements, of the Manor in Fee, or for Lease to me, by this it is gone. And in this case also it is so gone, that no acceptance of Rent or admittance of the Tenant after will revive it. But if the Lord grant the reversion of all his Copy-

hold

hold Tenements; by this the Mannor is not destroyed, *Co. 4. 27. of Copyhold, 176.* Or if when the Copyhold is come into the Lord's hands, he do by Fine, Feoffment, or Recovery, pass away the Fee, or make a Lease for life or years of the land, or suffer it to be extended on a Statute or Elegit of his own acknowledgment, or if after it come into the Lords hands he die, and it be after assigned to his wife in dower; by this in these cases the custom is destroyed for this Land, *Co. 2. 17. Cakb. 91.*

Or if the Lord, or his Lessee of the Manor, doth make a Lease of the Copyhold to the Copyholder, or make a Feoffment absolute or conditional to the Copyholder of the Copyhold, the which he doth accept. Or the Lord make a Lease of the Manor to the Tenant for life, the Remainder to a stranger; by either of these also it is gone, *Dyer 114. Kych. 82.* Or (as some say) if the Copyhold come into the Lords hand by Escheat, or the Lord purchase the Copyhold; but this opinion is disallowed. *Cakthrop. 90. 88. 91.* But if the Lord grant part of the Copyholds onely, by this it is clear the Manor is gone, and

customs destroyed. Adjudge 29 Eliz. *Calth.* 99. and where the Copyhold is extinguished, the land can never be a-ward granted by Copy.

If there be a Lease for years of the Manor, and one of the Copyholders doth purchase the Reversion in Fee; by this the Copyhold is destroyed, and the Lessee of the Manor shall out the Copyholder, and have the land for a time, *Calth. f.* 97.

And yet if the Copyholder accept a Lease for years of the Manor, or marry with the wife of the Lord, by this the Copyhold is not extinct, but it is suspended. And if a Copyhold be in hand, and the Lord alien by Fine or Feoffment, or make a Lease of the Manor for years; by this it is extinct.

And if a Copyhold be granted to three for their lives, and the first of them take an estate by Deed, with livery of seisin from the Lord; by this the Copyhold for that life is at least suspended, *Dyer* 30. *Co.* 4. 31. But the Copyhold is neither extinct nor suspended in these following cases, (*viz.*) where the Copyhold is surrendred, forfeit, or doth escheat into the Lords hands, and the

the

Lord doth keep it in his own hands, or
et it at will onely; or the Tenant hav-
ng licence from the Lord, make a leaſe
o a ſtranger according to his licence:
r without licence make a leaſe to the
Lord, *Co.* 4. 30. So where the impedi-
ment is tortious, as if the Lord be diſſei-
ed, and the diſſeiſor die ſeiſed; or the
and be recovered by falſe Verdict, or
rroneous Judgment; and afterwards is
continued. What is done againſt Law
reputed not done. The impediment
hich takes not its effect from the Law
invalid, *Co.* 4. 31. *of Copyhold* 178.

Quod contra legem fit pro infecto habetur.

Non valet impedimentum quod de jure non ſortitur effectum.

But in all the caſes before where the
Copyhold is gone, by grant of the rever-
on it is not ſo gone, but that the Te-
ant ſhall hold his eſtate ſtill, and ſub-
ect to forfeiture as before, as he muſt
ill perform the ſame ſervices (Suit of
Court excepted) as before, and the cu-
oms incident to the land, and if it be
arrow, Engliſh, or Gavelkind continue
ill But Fine upon Alienation, and Ad-
ittance is gone, and the Tenant cannot
ow ſurrender, or paſs his eſtate by any
ay but by a Decree in Chancery: And
is will bind the perſon onely, *Co.* 4. 25.
Copyhold 176.

Chap. 21.

What Acts amount to the Forfeiture of a Copyhold Estate, and how.

OF Acts which amount to a forfeiture, some are forfeitures in the act, and in the instant that they are done, such are offences apparent and notorious, of which the Lord by common presumption cannot but have notice: Some are no forfeitures, till a Presentment be made thereof. Other Acts there are which are offences, but are not such as cause a forfeiture, yet are they Finable to the Lord.

Of the first sort are these following Acts.

1 By not coming in to take his Land.

If by special custome upon the descent of any Copyhold of Inheritance the Heir be bound upon three solemn Proclamations, at three several Courts, to come in and be admitted into his Copyhold, and he cometh not, this is a forfeiture if he do not come; this is in the Admission Act a forfeiture. *Calthrop f. 69. Cop. Copyhold* 164. and yet if a Copyholder enter before admittance, this is no forfeiture

feiture, without a special custome for it.

So if a Copyholder being sufficiently warned to appear at the Court Baron of the Manor, and he wilfully make default, having no excuse for his absence. And this offence is greater if he do wilfully refuse to come; or being come to be sworn of the Homage, or being sworn to Present; or if he depart without Presentment: as if thirteen be sworn, and twelve Present, and one refuse. But if a Copyholder be hindred by sickness, Warders, debts, or the like, his default is no forfeiture, but otherwise it is in the Act a forfeiture. And yet some say this must first be Presented ere the Lord can take advantage of the forfeiture, *Dyer* 211. 31. *Calth. f.* 67. *Dyer* 233. 9 *H.* 6. 44. So if he swear in Court, he is none of the Lord's Copyholders, or being required to be sworn of the Homage, refuse it for that cause; this it seems is a forfeiture, and that without Presentment.

2 By denying of Suit of Court.

So if the Steward shew a Roll whereby the Tenant is proved a Copyholder, and the Tenant say he is a Freeholder, and shew a Deed to that purpose, and rent in pieces the Court Roll; this is such a forfeiture. And yet if there be a

doubt in it; and the Copyholder d... his ſervice with a Proteſtation, that ... may be recorded as it ſhall fall out: t... is no forfeiture, nor Finable. So if ... ſpeak unreverent words of the Lord ... the Court, as if he ſay, That he doth ... act and extort unreaſonable Fines, ... undue Services; this is onely Finable. ... if he ſay that he will deviſe a meane ... be no longer his Tenant; this is neith... a Forfeiture, nor Finable.

3 By non-payment of the Fine.

Where the Fine upon Admittance ... certain, if after Admittance it be ... demand denied, or not paid. Or whe... the Fine is uncertain, and the Lord ... ſet it reaſonable, and the Tenant do... not pay it in a reaſonable time after d... mand; in theſe caſes it ſeems there ... a forfeiture. But it is no forfeiture in ... to deny the payment, if it be ſet unre... ſonable. And of this point the Judg... and not the Jewry ſhall be Judge. Al... yet of this alſo ſome hold there muſt be ... Preſentment, before there can be a For... feiture, *Co.* 4. 27, 28. *Calth. f.* 67. *Trin.* 4. *Jac. B. R.*

4 By bringing a Replevin.

If the Copyholder ſue a Replevin a... gainſt the Lord diſtraining for his Rent or Service; this is ſuch a forfeiture, ſ...

of Copyhold 165. So if the Lord bring Treſpaſs againſt the Tenant, and he plead it his Free-hold. And yet if the Copyholder doubting of the truth of it, whether it be due or not, intreateth of the Lord that the Jury may inquire thereof; this is no forfeiture. 5 By pleading.

If a Copyholder for life ſuffer a recovery by plaint in the Lords Court, as Copyholder of Inheritance; this is ſaid to be ſuch a forfeiture. And yet if ſuch a Copyholder ſurrender in Fee, this is no forfeiture. So if Copyholders in Fee make Partition, this is no forfeiture, *Calthrop* 98. 6 By ſuffering a Recovery

If the Lord demand his Rent of the Copyholder, and he deny to pay it, or he delay to pay it without the Lord's agreement: Or if the Lord come upon the Land, and there continue demanding of the Rent, and it is not paid; this is ſuch a forfeiture: For the Copyholder knowing the time of payment, is to provide it againſt that time. And this alſo by ſpecial cuſtome may be a forfeiture before the admittance of the Tenant, *Co. of Copyhold* 167. *M.* 7 *Jac. B. R.* 7 By not paying Rent.

Waſte in a Copyholder is either voluntary or permiſſive. If a Copyholder com- 8 By doing waſte.

commit voluntary waste, as if he pluck down any antient built house, or build a new house, and then pull it down again; or plow up meadow-ground, so that the ground is thereby made worse; or cut more timber than there is need of, or being cut doth misemploy it, or doth not employ it in due time; or lop the trees and sell the loppings; or cut down any fruit trees for fewell, having other wood sufficient; or behead trees, or break the boughes, so as the bodies do thereby putrifie: all these things are forfeitures. And yet the cutting and carrying away of shrowds or under-wood, is no forfeiture, without a special custom to make it so.

So if the Tenant have a grant of the trees, or a Licence to cut down trees; in this case it is no forfeiture: but otherwise in these and such like cases, without a special custome (which ruleth much herein) to enable the Act, it is a forfeiture, 9 *H.* 4. 12. *Calth. f.* 68. *A.* 36. 37 *Eliz. Co. B. Co.* 4. 27 *of Copyhold*, 161. *Calth.* 98. *Co.* 1. 63. And these things will be a forfeiture when they be done by the Lessee at will of a Copyholder, and the Copyholder shall have his re-

medy

medy over against the Tenant at will by action of the case. So also it is for permissive waste: as if the Copyholder suffer his house to decay, or fall for want of repair, or suffer his Meadows or Lands by his ill husbandry to be spoiled. And yet some are of another opinion in some of these cases, for they hold, that many of these are no forfeitures till there be a Presentment of them. And herein they distinguish between voluntary and involuntary Acts, and Acts that lie in non-feasance, which they say must be presented, and Acts that lie in mis-feasance, which needs no Presentment, *Calth. f. 68.*

Of the next sort whereof the Lord must have a Presentment before he can take advantage of the forfeiture, are these things following, *(viz.)* where the Copyholder doth commit Treason or Felony, and be thereof attaint. Or be convict for Recusancy, or be Outlawed, or be Excommunicate, or goeth about in any other Court to entitle the Lord to the Copyhold. Or if he Alien his Copyhold Land by Fine, Deed, or make a Lease of it without License of the Lord: And yet this Lease as to all others but the

9 By committing of Treason, Felony, &c.

10 By making a Lease. &c. Licence.

the Lord himself is good. But in case where the custome will warrant a Lease for a year, there is no forfeiture, whether it be by word or writing: for without a custome of ennablement, it is held, that a Copyholder by the Common Law, cannot make a Lease for a year, 35 *Eliz. ch.* 2. *Trin.* 3 *Jac. Cannon, Co.* 4. 27. *Litt. Sect.* 74. If the Copyholder having a Licence to let for ten years, and he let for twenty years; this is a forfeiture. Yet if the Copyholder for life surrender to the Lord to the use of another in Fee, or make a Feoffment in Fee, or Lease for life, but doth not make Livery of Seisin upon it, or not make a good Livery upon it, or doth bargain and sell the land without Inrollment of the Deed; neither of these is a forfeiture, *Trin.* 36 *Eliz.* 2. *Co. B. Co.* 4. 23. 1. *part. f.* 495. *of Copyhold* 169.

So if the Copyholder have Copyhold lands, and other lands in Dale, and he bargain and sell all his lands in Dale, and the Deed is inrolled; by this the Free-land onely passeth; *ergo*, this is no forfeiture: But if he have no Free land, there it is a forfeiture: And all these offences

offences are the greater when they are willingly done.

Of the third ſort of offences are theſe following, (*viz.*) Where the Copyholder being of the Grand Jury, doth indict the Lord, or give evidence againſt him: or being a Bayliff if he arreſt him or ſue him at Law (except it be in the caſe of a Replevin before) neither of theſe Acts is a forfeiture, nor is it Fineable. So neither if the Copyholder diſſeiſe the Lord of any other Land, *Calthrop. f.* 68, 91.

So if the Copyholder abuſe the Lord in words, or abuſe the Lord's Common with his cattle, or rail upon another Copyholder in the Court, or uſe any ſuch like words or deeds of contempt, that do not tend to the Lords diſinheritance; theſe things are at the moſt but Finable, *Calthrop f.* 45.

William Hampton
1690

CHAP.

CHAP. 22.

Who may Forfeit: And how.

IN answer to this question, these things are to be known.

Non compes mentis. 1 A Copyholder of an unsound memory, an Ideot, or a Lunatick, cannot forfeit his estate.

Infant. 2 An Infant under fourteen years of age cannot forfeit, for he is till then to be in Ward to the next of kin, or Bayliff, according to the custome of the place. Nor can he forfeit by any negligent or ignorant offence, as non-claim, not coming to be admitted, not repairing, nor malefesans: Thus if he bring a Replevin against the Lord, alien by Deed, or the like Acts: But by a voluntary waste, or obstinate denial of Rent, an Infant may commit a forfeiture. And so he may by doing a Felony. *Co. of Copyholds*, 172.

Feme covert. 3 A feme covert cannot by Act, she can do alone, forfeit her estate; but her husband, or she with the consent of her husband, may. Yet if a stranger with the wives consent, without the consent of her

her husband commit a waſte; this not a forfeiture, *Co.* 4. 27. *of Copyhold* 172, 173.

4 The Guardian of a Copyholder, may forfeit his Wardſhip, but he cannot forfeit the Copyhold, *Co. of Copyhold* 172, 173. Guardian.

5 *Cey' que uſe* of a Copyhold cannot forfeit it. *Cey' que uſe.*

6 A Diſſeiſor of a Copyhold cannot forfeit it. Diſſeiſor.

7 He that doth forfeit, can forfeit but his own part; and therefore if there be two Joyntenants, and one of them commit a forfeiture; Leaſe for life, the remainder for life, or in Fee, and the firſt Tenant for life commit a forfeiture or purchaſe the Manor, and extinguiſh the Copyhold, the the remainder is not hurt.

If the husband and wife be joynt Copyholders of the purchaſe of the huſband during coverture, and he is attainted of Felony, and dieth; his wife ſhall have all the land. But if the purchaſe were before the marriage, then a moity is gone, *Calthrop f.* 92, 97. So where the eſtate is made to three ſucceſſively, and one of them doth commit a forfeiture;

ture; this cannot hurt the estate of the other two. So where a Copyholder in Fee by license doth make a lease for years by Deed, or without licence by copy, and either of these Lessees commit waste; by this the Reversion is not forfeit, *Co. of Copyhold* 172.

8 If a Copyhold be surrendred to the use of *I S.* he cannot forfeit this before admittance.

9 If one have several Copies, the forfeiture of one of them is not the forfeit of the other, *Co. of Copyhold* 174.

Chap. 23.

Who shall take advantage of a Forfeiture.

Regularly, none may take advantage of a Forfeiture, but he that is Lord of the Manor at the time of the Forfeiture. And therefore if the Copyholder make a Feoffment, and then the Lord doth alien the Manor; in this case neither the grantor nor the grantee can take advantage of the Forfeiture. And yet if there be Tenant for life of the Manor, the remainder in Fee, and a Copyholder commit

commit a forfeiture, and the Tenant for life of the Manor die before his entry; in this case he in remainder may enter. And he that was never Lord of the Manor, shall take advantage of the forfeiture: as where the Lord make a Feoffment of a Copyhold in Fee: in this case the Feoffee shall enter for the forfeiture, *Co. 4. 24. of Copyhold* 176.

CHAP. 24.

What Act will be a confirmation of an Estate forfeit.

IN case where a Copyhold is forfeit, and the Lord have notice of it, if he shall do any thing afterward whereby he shall acknowledge the Copyholder to be his Tenant: as distrain upon the land for rent, admit him to be Tenant, or the like: by this the Lord is concluded to take advantage of the forfeiture. And yet if the Act done by the Copyholder be such an Act as doth destroy the Copyhold: as if he makes a Feoffment of the Copyhold, or the like: In this case, no subsequent Act of the Lord will help, *Co. of Copyhold* 176.

CHAP.

CHAP. 25.

In what Statutes Copyholds and Copyholders are included.

THey are expressed in these following Statutes, *R.* 3. 4. A Copyholder that hath 26 *s.* 6 *d.* the year, may be a Jurer, as well as he that hath 20 *s.* the year of Freehold land, 1 *Ed.* 6. 14. about Abby land, 2 *Ed.* 6. 8. about Offices found, 1 *M.* 12. now expired touching the assistance of Justices of Peace to suppress a Riot, 5 *Eliz.* 14. about Forgery to defraud a Copyholder, 13 *Eliz.* 7. about the Copyhold of a Bankrupt, 14 *Eliz.* 6. about his Copyhold that doth depart the Kingdome without leave, 35 *Eliz.* 2. about a Recusant. When a Statute doth alter the Service, Tenure, Interest of the Land, or other thing in prejudice of the Lord, Custome, or Mannor, or of the Tenant there, the general words of Tenant, or the like, extend not to Copyholders. But when the Act is for the good of the Common-wealth, and no prejudice may accrue by reason of any alteration of the

the interest, service or custome of the Manor, there usually Copyholders and Copyholds are included, *Co.* 3. 8. For this cause it is judged that they are not intended in these following Statutes, (viz.) *Westm.* 2. 1. of entails. And yet by custome such lands may be entailed. Custome. *Westm.* 2. 26. Of an *Elegit.* 16 *R.* 2. 5. Of forfeiture of lands by receiving Bulls, &c. 2 *H.* 5. 7. Of the forfeiture of Heriotts. 27 *H.* 8. 10. Of Uses. 31 *H.* 8. 1. 32 *H.* 8. 32. About Partition. 32 *H.* 8. 28. Of Leases made by Tenant in tail, or husband and wife. 17 *Ed.* 2. 18. Of Ideots lands, *Merton* 1. Of Dowages *Co.* 4. 30. *Westm.* 2. 3. 32 *H.* 8. 13. and that of 32 *H.* 8. 9. Of Champerty. *Co.* 4. 26. 4 *H.* 7. 24. Of Fines. *Co.* 9. 105.

CHAP. 26.

How a Copyholder may sue and be sued.

FOr the better understanding hereof, these things are to be known. 1. For any thing which doth concern his Copyhold, he cannot sue or be sued in any real Action, or Action savouring of the

reality elsewhere, but in the Lords Court: So that if a stranger out him, he must sue by plaint in the Lords Court as his case is. And there the Entries are thus, *A.* of *B.* plaineth against *C.* of *D.* of a plea of land, *viz.* of one messuage, 40 acres of Land, 4 acres of Meadow, &c. with the appurtenances. And mak-eth protestation in nature of the writ of our Lord the King of Assise of mort d'ancestor, at the common Law, or of the writ of our Lord the King of Assise of novel disseisin at the common Law, &c.

Pledges of Prosecuting, &c.
Littl. Sect. 76.

But he may bring an Action personal in any other Court. And the Lessee of a Copyholder may bring an *Ejectione firme* in any other Court, *Co. of Copyh.* 147.

Ejectione firme.

2. If the Lord out him he may have an *Ejectione firme*, or Trespas against the Lord in any Court; but he cannot have an Assise against the Lord, *Co. of Copyh.* 147.

3. A Copyholder of base Tenure in ancient Demesne cannot have a Writ of *Droit close* or *Monstraverunt*, but Tenants of Frankmarriage in ancient Demesne

meine may *Co. of Copyhold* 146.

4 If the Copyholder by licenſe of the Lord make a Leaſe of the land, and the Leſſee cut down timber, there being a cuſtome that the Copyholder may cut down timber: the Copyholder in this caſe, muſt punish this in the Lords Court.

5 If a wife dowable by cuſtome recover her dowre by plaint in the Lords Court, and in the Action ſhe recover damages alſo; ſhe may not ſue for theſe dammages at common Law, *Co. of Copyhold* 146.

6 If a Copyholder make a Leaſe by Copy for yeares, or by Deed with Licenſe rendring Rent, an Action of debt for this rent may be brought in any other Court, *Co. of Copyhold* 146.

7 If a ſtranger cut down the Trees growing on the Copyhold, an action of Treſpaſſe lieth againſt him for this at common Law. So if the Trees by cuſtome doe belong to the Tenant, and the Lord doth cut them down, *Co. of Copyhold* 147.

8 If the Copyholder ſurrender to the uſe of the Creditor in truſt to pay his debts, and then to have the land a-

gain, and he keep it; in this case this being proved by examination of witnesse upon an English Bill, the Lord may reseise and restore the land, *Calthrop. f. 74.*

9. If the Lord have a great waste, and he grant a Rent out of it; the Grantee may distrain the Tenants, unlesse they can prescribe to have Common there, *Calth. f. 97.*

10. If the Steward, Bayliffe, or Tenants, into whose hands the surrender is made, refuse to present or admit the Tenant; in this case he is to sue by Bill or Petition to the Lord in his Court. And if the Lord will not there do him right, the Tenant may sue him and them in Chancery, and there he shall have relief, *Co. of Copyhold. 180.*

11. For the order of Proces in Suits in the Lords Court, inquire the Customs of the place. and see *Calthrop. fol. 75. 98.*

CHAP.

CHAP. 27.

Of a Licenſe to Alien.

FOr this, theſe things are to be known:

1 That the Lord may Licenſe his Tenant to let by Deed for years if there be a cuſtome for it. And the entry of this in the Court Rolls is thus. At this Court *I.S.* prayeth licenſe of the Lord to demiſe, &c. To whom the Lord gives licenſe, &c. And if it be by the Steward; whom the Lord by the Steward hath licenſed, *Co. of Copyhold* 123, 125.

2 This Licenſe (it ſeemeth) is not pleadable by the Steward without a ſpeciall cuſtome to enable him to doe it, or a ſpeciall warrant from the Lord to give power ſo to doe, *Co. of Copyhold* 124. Cuſtome.

3 If a Tenant for life of a Mannor grant a licenſe to a Copyholder to Alien, and the Lord die; in this caſe the licenſe is good, *Co. of Copyhold* 85.

Chap. 28.

Of a Tenure.

A Tenure is the manner whereby Lands are holden of their Lords. This seemeth to differ little from Service, for there can be no Tenure without some service; but that Services seem to be the effect of a Tenure. Touching so much of which as shall serve to our purpose these things are to be known:

1 A Tenure is said to be either Perfect, which is between the very Lord and very Tenant, or imperfect, which is between the Doner and Donee, or Lessor and Lessee. A Tenure also is said to be Spirituall, and so it is either incertain as Frankalmoigne, or certain, as divine Service. Or it is Temporall: and so it is more honorable, or for a time of war. Such is all kind of Service in Chivalry as Escuage, Cornage, Grand-Serjeanty, Knights Service in Capite, Knights Service or Chivalry, and Castle Gard.

Or more base, & for a time of Peace such is all Socage Tenure, as Petit Serjeanty

janty, Burgage and Socage in Capite. But to hold in Fee farm is no Tenure at all, *Littletons Tenures throughout.*

2 Lands and Tenements do lie in Tenure, and so (it seems) doth an Advowson in grosse, and of these a Tenure may be said to be; but not of a Rent. Seigniory common or the like, except it be in case of the King, *Broo. Tenure.*

3 Any man may extinct a Tenure, but no man but the King can create a perfect Tenure, or alter a Tenure to bring it to another, but in some speciall cases, *Co. of Copyhold f.* 55. *Dyer* 84. And therefore if a Tenant in Fee-simple enfeoffe another in Fee, neither by the expresse reservation of the Feoffer, nor implied reservation of Law can a perfect Tenure be made, the Feoffee shall hold not of the Feoffer, but of the Lord Paramount.

We shall speak but of two kinds of Tenures, Knights Service or Chivalry, and Socage. And first of Knights service.

Chap. 29.

Of Knights Service.

THis is such a Tenure, as whereby the Tenant is bound to go with his Lord in the Wars, or keep a Castle, or the like. Touching which this only for our purpose is to be known.

1 This may be of the King, as when one doth hold of him as of his Manor Dale, or the like.

2 To this doth belong Aid, Homage, Fealty, Ward Marriage and Relief; but it doth not draw any other Land with it; neither need the Tenant to sue Livery for this Land, *Co. 1. part. f 75. 56.*

Chap. 30.

Of Socage.

IT is a Tenure whereby the Tenant doth hold of his Lord to pay him some Rent, or to doe him some Husbandry businesse for all manner of Services. Touching so much whereof as is needfull in this place, know this.

1 That

1 That it is either free, i. to pay a certain summe of money in lieu of all services; or it is villeine i. to plow the Lords ground, carry his dung, or the like.

2 To this doth belong Aid and Relief, but not Wardship, Homage, or Marriage, Co. 9. 130. *Lit. Cap. Socage.*

Chap. 31.
Of Services.

Service is that duty which the Tenant by reason of his Fee oweth to his Lord. Touching so much whereof as we shall use here, know these things. Services as Tenures do admit of many divisions, some of them are either more noble, as Knights Service and the like, or more base and clownish, as Socage and the like. Some of them were bound, and some free: some of them were real, as Wardships, Marriages, or the like. And some of them are Personall or Corporall, i. to be done by mens persons or bodies: and these again are either of Submission, or of Profit. Of Submission, as Homage and Fealty. Of Profit, and this either

either to the publick profit of the Kingdome, or private profit of the Lord. To the publick either for defence of the Realm; as first, all kind of Knights Service. Secondly, to repair wayes and bridges. Thirdly, for works of Piety to maintain a Preacher, repair Churches, or the like. Fourthly, for works of Charity, as to marry poor women, or such like. Fifthly, for works of Justice, as to aid the Sheriff, or the like.

To the private profit of the Lord, as Rent, suit of Court, to the Butler, Baker, or Carver to the Lord.

Some Services are annuall, to be paid or performed every year, as Rent, Suit of Court, and the like.

And some are accidentall to be paid or done now and then, or one time as it falls out, as Heriot, Fealty and Homage.

These, some of them lie in Render, as to pay Rent: some lie in Prender, as that the Lord shall take four load of wood out of his Tenants grounds. And some of them again lie in User, as that the Lord shall have Common for his Cattle in the Tenants grounds.

There are also divided again into in-

tire

ture Services, as a horſe, a ſpur, or the like.

And into dividable Services, as mony, and the like: And into certain, and incertain, and into Services of fidelity, and no profit, or profit and no fidelity, *Co.* 6. 10. 108 *Litt.* 122.

If the Tenant or Freeholder refuſe to doe corporall Services, as Homage, Fealty, amend high-wayes, bridges, or the like, do the office of a Butler, Carver, Baker, or the like, pale the Lords Park, tyle his Houſes, thatch his Barn, or the like, being bound by his Tenure: the Lord may diſtrain the Goods or Cattle of his Tenant, and keep them till ſatisfaction, *Co. of Copyhold f.* 49.

So if a Freeholder refuſe to pay his annuall Rent or Service according to his Tenure, the Lord may diſtrain and avow the taking up of a Replevin. But ſo long as the Rent doth continue of any eſtate of Franktenant, no Action of debt lieth for the arrearages, no more then for a corporall Service. But after ſeiſin he may have an aſſiſe for the rent, But after the eſtate is determined, an Action of debt will lie for the arrears of the rent, *Co. of Copyhold f.* 50. But of this ſee more at large, *chap.* 42.

But

But accidentall Services are gotten either by seisure, as a Wardship of the heirs body, waises, estrayes, wrecks, deodands, and such like forfeitures; or by entry, as the Wardship of the heirs Land, So upon Land forfeit to the Lord upon the breach of some condition, or upon an Alienation in Mortmain, or by seisure or distresse, as Heriots, Service or Custome, or by Entry, or Action, as Lands forfeit to the Lord by the cesse of the Tenant, or escheat upon the Attainder of the Tenant, or his death without heir; in the one case he hath a writ *Cessavit*, in the other a writ of Escheat. Or by distresse or action, as reliefs and amercements; for relief which is no Service, but the fruit or imprisonment of a Service, the Lord may bring an Action of debt or distrain: And for amercements, the Lord may either distrain, or bring an Action of debt. Other remedies there are against strangers that detain their Services from the Lord, *Co. of Copyhold f.* 50, 51, 52.

CHAP.

CHAP. 32.

Of Homage and Fealty.

SErvices of Submission are Homage, and Fealty, which are certain Ceremonies used amongst Tenants, whereby they submit themselves to their Lords, or binde themselves by solemn Oath or faithfull promise, from that day forwards to become the Lords men for life, member, terrene honour, or at least to owe him faith for the lands they hold of him. Touching which these things are to be known.

1. Thus farre these agree, that they are both taken when the Tenant first entereth into his land.

2. They tend to one end to enforce the Tenant to submit to the Lord. But they differ in many things. First, in doing fealty, the Tenant taketh a solemn oath; in doing Homage, he only giveth a faithfull promise. Fealty therefore is more sacred, Homage more humble. For in doing Homage, the Tenant kneeleth; in doing Fealty, he standeth: in doing Homage, he is uncovered; in doing Fealty,

ty he may be covered; in doing Homage, the Lord kisseth his Tenant; in doing Fealty, not; and in doing Homage, he promiseth to become the Lords man for life, member, and terrene honour, but in doing Fealty, he sweareth onely to become the Lords faithfull Tenant: for Homage concerneth warre, and doth properly appertain to Knights Service; but Fealty chiefly concerneth Service at home, and properly appertaineth to Socage Tenure. Albeit Homage may be done by Socage Tenant, and that Homage *ex se*, maketh Socage Tenure, & not Knights Service: yet it was not so from the beginning. Secondly, none but the Lord in Person can receive Homage, but the Lords Steward or Bayliffe may receive Fealty. And the Lord who hath but an estate for life in his Seignioty, cannot receive Homage, but he may receive Fealty. Thirdly, no Copyholder may do Homage, but he may do fealty: no Tenant for life or years, but in Fee-simple or tail can do Homage, but such a Tenant may doe Fealty. Fourthly, Homage can be but once done to the Lord by the same Tenant, but Fealty may be often: And therefore if lands descend to me from

from one, and I doe Homage, and after other lands descend from another, I shall not doe Homage again, but I shall doe Fealty. So if a Copyholder surrender to the use of *I. S.* white Acre, for this he shall do Fealty, if he surrender black Acre to his use, he shall do Fealty for this also, *Co. of Copyhold Sect.* 19.20.21.

CHAP. 37.

Of Suit of Court.

SUit of Court is the attendance which a Tenant doth owe to a Court: for which these things must be known.

1. That this either reall or royall, which is the service that men owe to the Sheriffs Turn, and Lawdayes, which men are bound to by their Oath of Allegiance there taken, and by there residence and abode within the compass of the Leet, and not in respect of the Tenure of their land: And therefore if one have land in divers Hundreds, and he be distrained where he doth not dwell, he shall be discharged by a Writ; And for default of this Service, he may be amerced and not distrained. Or it is

Co-

Covenant Suit, which is where one hath bound himself by Covenant to doe Suit to anothers Court, for remedy whereof he must sue the Covenant. Or it is Suit custome, where by the custome of the place, one is bound to doe Suit of Court to this or that Court; So are some in the Leet Courts, Barons and Hundred Courts. And this is not to be done in respect of a mans resiancy or abode, but in respect of his Tenure of that land within the Manor, Hundred or County where the Court is: And for this a man must be distrained and not amerced, or he may be forced by a speciall writ.

2 If the land to which the Service doth belong, doth come into the hands of divers Parceners, the eldest must doe it, and the rest shall be contributory and she may be compelled thereto by a speciall writ for that purpose. So where there be many Feoffees for Jointenants, one shall doe the Suit, and the rest shall be forced to contribute: *Br. Suit 17. F. N. B. 58.*

CHAP.

CHAP. 34.

Of a Gardian, Gard, and Wardship.

A Gardian is one that hath the cuſtody of an Infant being under age or of that which is his, or of both. The Ward is the Infant. The cuſtody of an Heir is called the Wardſhip: And ſo a Gardian is either by Common Law, or by cuſtome. By Common Law as a Gardian in Chivalry, Gardian in nature, in Socage, or becauſe of nurture. The Gardian and Wardſhip in Chivalry is the Wardſhip of ſuch an Infant, whoſe Anceſtor held his land by Tenure in Capite, or Knights ſervice: And by reaſon thereof, his Heir, be it male or female, and the land muſt be in the cuſtody and under the protection of the Lord during the Minority. And touching this, theſe things are to be known:

1 The Lord of whom the land is held by the Tenure ſhall have this Wardſhip as a chattel to his own uſe to be ſold or diſpoſed, and to go to his Executors as other chattels.

2 He ſhall have the Wardſhip of the

Heir male till one and twenty years old, of the female till fifteen, if she be unmarried at her Ancestors death, but if she be married, or above 14. at her Ancestors death, she is not to be in ward.

3. This Tenure draweth to it with the land the profit of the Heirs marriage, which the Lord will have. *Co. 1. part. Inst. 76. 88.* This Gardian is to take all the profit of the land without waste making, and to keep his goods and cattles safe to the Heirs use: he is to give him fit education, and to protect him from hurt, marry him without disparagement, and when he is of age, let him have his land again. Unless it be where the Heir marry himself, or will not be married by his Lord, in which case he may keep the land till he be satisfied for the value or forfeiture of his marriage. *Litt. in toto.*

4. If a Child living, his Father or Mother happen to be in such a case; his Father or Mother, and no other, shall have the wardship of his body; and then he is called a Gardian in Nature. *Broo. Gardian 110. Plow. 304. F. N. B. fol. 90. 143. Co. of Copyhold 4. 26. 27.*

The Gardian and Wardship in Soca-

is the Wardſhip of ſuch an Infant whoſe Anceſtor died ſeiſed of land held by Socage Tenure, or in the nature of Socage Tenure, as Petit Serjanty, Copy of Court Roll, or the like: And touching this, theſe things are to be known.

1. The next of kin to whom the heritage by the Heirs death will not deſcend, and that will not have benefit by his death, ſhall have this Wardſhip.

2. He ſhall hold the Land, and take the profits to the uſe of the Heir only and not to his own uſe, only he ſhall have reaſonable allowance for education and expences.

3. This Wardſhip ſhall continue no longer, but till the Heir be fourteen years of age, and then the Heir may call the Gardian to account for the profits of the Land. And if the Gardian marry his Heir before he be fourteen years old, he muſt account to him not only for the profits of the Land, but alſo for the marriage, and ſhall pay to the Heir ſo much money as was offered him, or he might have had in marriage.

4. This Wardſhip is annexed to the perſon of the Gardian, therefore he

cannot grant to another; and if he dye before the Heir be of fourteen years old, the Executor or Administrator shall not have it, but it must go to the next of kin: And if a wife have it, it will not be the husbands by marriage as a chattel will be. And therefore in all these respects it doth differ from the Wardship in Knights Service.

5 The Gardians duty is not to do wast, but to preserve the Inheritance and the writings, and to give the Heir fitting education, and at last to marry him with care, and to the Heirs advantage and not to give or sell the marriage. *Litt. cap. 4. in tres*, and *Co. upon it*, *Co. of Copyhold*, *f.* 26, 27.

If a man dye seised of a Rent Charge, Common, or the like, and his Heir is within age of fourteen years, here he may chuse his Gardian, and if he be so tender as he cannot, and the father have made no disposition by his Will, it is fit for the next of kin or Gardian in Socage if any be. However, whosoever doth receive the profits thereof shall be chargable to the infant in account. *Co. super Litt. f.* 87.

The Gardian because of Nature who

who also is called a Tutor, is either Testamentary (i) such a one as is made so by Will: As when a man dieth with goods or chattels, or lands not held in Knights Service or Socage or appointed by the Prætor, made by the Ordinary. Touching the first, these things are to be known.

1 If he give his goods and chattels to the Child, and by his Will further appoint some friend to have the government of his Child, Person and Estate, until he come to fourteen years old: for then he shall be out of Ward for his body, but his goods may be kept longer from him if his fathers Will be so. *Co. of Copyhold f.* 23, 24.

2 He may by his Will commit his Socage land to what friend he please, and for what time he please, but so he cannot do of Knights Service land.

3 If a Copyholder dye, his Heir under fourteen years old, the Lord must appoint his Gardian till he be fourteen years old, and the father cannot by his Will prevent it.

The Tutor or Gardian or appointed by the Prætor is made by the Ordinary; which is where the father in the case be-

fore doth give the estate to the Child, and appoint no Gardian. Touching which these things are to be known.

1. In this case the Ordinary may appoint one to be Gardian, till the Infant be of fourteen years old.

Invito curator non datur.

2. After fourteen he is not to have any assigned, for then the Rule is, a Gardian shall not be forced upon a man *Coke of Copyhold fol.* 26. 27.

The Gardian by Custome is Orphans in the City of *London*, and other Cities. Some make a third sort, or Gardian by Statute Law, as *Coke upon Lit. fol.* 38. 6.

For the getting of a Wardship of the body, it must be by seisure of the Lands, by Entry. *Coke of Copyhold. fol.* 51.

If a stranger detain the Wards body, or Land from the right Lord, he may have a special Writ to relieve himself against him in this Case. *Coke of Copyhold fol.* 52.

CHAP.

Chap. 35.

Of Aid.

Aid is a yeelding of help by one to ano her to whom he oweth it, and whoſe caſe calleth for it; and it is from a Superior to an inferior: As when a particular Tenant is ſued, and he in reverſion helpeth to defend the ſuit; or from one equal to another: as when a Parc ner is ſued for and loſeth part of the Land, ſhe ſhall have aid of her fellow. Or it is from an Inferior to a Superior; ſo the Subject muſt help the King by Subſidy: So the Tenant is to aid the Lord, touching which theſe things muſt be known.

1. The Tenant by Knights ſervice, and Tenant by Socage, both are to yield it.

2. Reaſonable aid ſhall be twenty ſhillings for a whole Knights Fee, of him that holdeth by a Knights Fee, in Chivalry, and as much for twenty pound Land held in Socage: and ſo for the rate.

3. It is for two ends: To make the

Lords Son Knight, and to marry his eldest Daughter.

4 That to make the Son Knight, he may have it at his age of fifteen years; that to marry his daughter at her age of seven years.

5 If he will not pay it, the Lord may distrain for it, or recover it by a special Writ for that purpose.

If the father levy it of his Tenant, and dye before his daughter be married, his Executor if he have Assets, otherwise his Heir, shall answer what he received. *Westmin.* 1. 35. *Coke of Copyhold fol.* 91. 162. *F. N. B.* 82. *Coke* 11. 44.

CHAP. 36.

Of Heriots, or Harriot.

THis is the best Chattel which the Tenant hath at the time of his death, or Alienation, which he is to render to his Lord: This in some places is his best live beast, some places his best goods; in some places the best upon the Land: in some places his best goods where ever it be. *Coke of Copyhold, fol.* 28.

For

For the opening of this further, know these things.

1 This either by custome, as amongst Copyholders, when it is due and hath been paid time out of mind, according to the custome of the place, after the death or alienation of the Tenant: Or by Service, when there is no such custome in the place, but it is by special reservation and agreement that the Tenant shall hold of the Lord to pay a Harriot at the time of death or alienation.

2 Harriot Service is seldome reserved on any less estate then inheritance, but may be reserved on a lesser estate: but Harriot custome is usually paid, or an estate for life or years.

3 For Harriot custome albeit the Lord cannot shew the original of it, yet if he can shew how it hath been paid from time to time upon the death and alienation of the Tenants it is good.

4 The Lord hath a property in this, and therefore as soon as it happens, the Lord may seize it where ever he find it; and if it be detained, he may have a detinue for it; if eloyned, an Action of the Case; or he may distrain for it if he will.

5 If a woman be to pay a Harriot by custome,

cuſtome, her husbands goods ſhall not be taken without ſpecial cuſtome. *M. 5 Jac. B. R.*

6. One cannot by deviſe prevent the Lord of this duty.

7. If the cuſtome be that if he die ſeiſed he ſhall pay it, and he is outlawed and dieth before entry, yet he muſt pay it.

8. For Harriot Service, if it be certain, as a beaſt, &c. The Lord may either ſeiſe or diſtrain, but if it be incertain, the Lord cannot ſeiſe it, but he muſt diſtrain for it.

9. If the Lord chuſe the worſt he cannot after help it but is concluded. 28 *Henr.* 7. 13. *Plow.* 96. *Kelw.* 184. 8 *Hen.* 7. 10. *Dodr. & St. f.* 76. *March Rep.* 23. *Broo. Hariots in toto. Co. upon Litt. fol.* 185. 16 *Hen.* 7. 5.

Chap. 37.
Of a Relief.

A Relief is a certain ſumme of money or other thing which the Heir of a Freeholder being of full age at the time of his Anceſtors death is then to pay

pay the Lord at the entrance of the Heir into his Land. And this is all the Lord is to have of his Tenant when he is of full age. *Terms of the Law.* And it may be divided into Relief, Custome and Relief service. Touching which these things are to be known.

1. This and Harriot agree in some things, but in this differ. First a Harriot lyeth in taking, and Relief in giving. Secondly, a Harriot is paid for a Tenant deceased, a Relief for an Heir come to the Land. Thirdly, Harriots are paid by Copyholders, Reliefs by Freeholders onely. Fourthly, Harriots are ever upon some Custome or special Reservation, but Reliefs are incident to the Fee, and due without Custome or Reservation, *Co. of Copyhold f.* 38.

2. There is a kind of payment like to this by special Custome in some places also upon the Alienation of the Tenant. *Co. of Copyhold. f.* 32. This is paid for Land held in Socage, and for Land held by Knights service, if the King or other Lord have the Wardship of an Heir within age at the death of his Ancestor, he shall have no Relief at his full age. *Magna Charta, Chap.* 3. And yet if the King

King have the Wardship of other Lands by his Tenure by the nonage of the Heir the Heir when he comes to age must pay a Relief to other Lords, and so to the King also if he be to sue out no Livery. *Co. upon Litt. f. 71 Magna Ch. 13. Br. Relief 13.* And generally where one shall be in Ward if he be within age, he shall pay a Relief if he be of full age. *Br. Relief. 12.*

3 This is not alike for all Tenures, or in all places, and therefore incertain: in some places it is by custome, a years, in some places half a years profit, and there the Custome is to be observed. By Tenure it is more or less, and in some Cases to be paid at one time, and in some Cases at another time. Regularly in Case of Knights Service, if his Heir be full twenty one years old at the death of the Ancestor. The Relief for a Dukedome two hundred pound, for a Marquisse two hundred marks, for an Earldome a hundred pound, for a Barony a hundred marks, for a whole Knights Fee, which anciently was so much as was thought sufficient for a Knights living, a hundred shillings. And so for the rate. If the Tenure be by grand Ser-

erjanty, the Relief is the value of the
nd for one year. If the Tenure be
ocage Tenure, or in the nature of So-
ge Tenure, and the Heir about four-
n years old at the death of the An-
stor, the Relief is double the Rent:
) If the Rent be ten shillings, the Re-
f is ten shillings more, which the Te-
nt must pay presently: And if he be
pay five shillings at *Easter*, or a pair
f Spurs, the Tenant may double which
e will, but if he passe the day, the Lord
ay have which he will. But for Corpo-
l services, as days work at Harvest or
e like, more Relief is to be paid. *Co.*
Litt. fol. 69, 83, 84, 91, 162. *Coke*
33. *Kelw.* 136.

4 For this service the Lord may di-
ain, and cannot have an Action of debt
some say: And his Executors may
ing an Action of debt, but cannot di-
ain. Others that the Lord may distrain
bring Action of debt, *Co. of Copyhold*
51. where it is by Custome the Lord
all have the remedy accustomed.

CHAP.

Chap. 38.

Of a Fine and Amercement.

THis word Fine is taken in divers senses, but to our purpose here, it is a summe of money imposed upon a person by the Steward in a Leet, for some offence or misdemeanor committed in his presence: and an Amercement is also a penalty assessed or pecuniary punishment for some offence done by way of Omission or Commission: A touching which these things are to be known.

1. These agree in some things, for they are penalties imposed for offences, but they differ in these things. First, a Fine is commonly for some great offence, and is a greater summe; an Amercement for a less offence, and a lesser summe. Secondly, a Fine is in a Court of Record only, and therefore a Court Baron, which is no Court of Record, cannot fine; and therefore this Court can amerce only: But a Leet may amerce as well as fine. Thirdly, a Fine need not be affered, but an amerce-

mer-

ment commonly ſo may be, and muſt be. *Co.* 8. 61. *of Copyhold* f. 40.

And for ſo much of this as doth concern our preſent purpoſe, theſe things are to be known.

1. For any miſdemeanour in the face of a Court; as if any one uſe contemptible words to the Steward or Jury: A Juror refuſe to be ſworn, or an Officer of the Court neglect his duty or be corrupt, if it be in a Leet the Judge may fine the offender, but if it be in a Court Baron, he can only amerce him: And if the offence be out of Court, the Jury muſt preſent it, and then the offender muſt be amerced by the Jury, except it be by Officers of the Court, for then it may be done by the Steward, and needs not to be affered: Neither if it be a Townſhip or Village that doth offend, the amercement muſt be put upon the whole.

2. The amercement muſt be reaſonable, otherwiſe the party grieved may relieve himſelf by a *Moderata Miſericordia*. *F. N. B.* 75. *Co.* 11. 43. *Co.* 8. 61. 59. *Co. of Copyhold* 40. 41. *&c.*

CHAP.

CHAP. 39.

Of a By-Law.

BY-Laws are Orders made in a Court Leet, Court Baron, or elſewhere by common conſent and agreement, for the good of thoſe that make them, to bind them further then the publick Law doth bind. Touching which theſe things as material in this place are to be known:

1 That the Inhabitants of a Village, or other ſuch peculiar Society, or the major part of them together in their Court Leet, Court Baron, or otherwiſe by a mutual conſent and agreement of ſuch major part may make any Ordinances and Orders for the better government of the place: As for repairing Churches, Bridges, Highways, or otherwiſe for the publick good: And for ſuch like things as theſe by the very Common Law, without any ſpecial cuſtome, this being made by the major part will not only bind them who did agree to it, but all others of that ſociety, or within the Leet, if it be made there: And they may hereby

hereby make taxes upon all the Inhabitants, appoint publique Officers to levy them, and penalties, as by another Law. But for such things as concern the private, well and better government of the place only; without a speciall custome to warrant it, they cannot make such by-Lawes; neither will in this Case the greater part binde the rest without a speciall custome to warrant it. *Co.6.63. 1.63.11 H.7.14.21.21 H.7.20.40.44 Ed.3.19 Bro. Leet.34. Prescription* 40.

2 If a Taxe or Amercement be put upon a Village, and the major part agree what every man shall pay, and they refuse, it seems they may appoint one to levy it, and he may distrain for it, and justifie the distress. *D. & St.f.*74. Distresse.

3 No by-Law in this Case can be made to imprison the Refusers, but distresse and action of debt in this Case is the proper remedy for a penalty imposed, or breach of a by-Law. *Co.*5.64. Imprisonment.

4 Such by-Lawes as are against Law and reason are void.

5 The Lord may by Prescription distrain for the Amercements upon them, and sell the distresse. *Bro. Leet.* 34 *Prescription* 34.

Chap. 40.

Of a Forfeiture.

A Forfeiture is the effect of transgression of some Law, or of the committing of some offence; by the doing whereof, some reall or personall thing is forfeit: And this may be of Land, or of goods or chattels. And of Lands, it may be either of Copyhold Land, or of Freehold Land; of Copyhold land we have spoken before: in *Chap.* 21. 22. 23. Touching forfeiture of Freehold lands these things are to be known.

Mortmain 1 If any Freeholder doth alien his land in Mortmain, he forfeiteth his Freehold.

Cessavit. 2 If a Freeholder doe cease for the space of two years to perform his services, or pay his rent he is bound to by his Tenure, and hath not sufficient Goods and Chattels upon his land, whereby to be distrained, he forfeiteth it.

3 If the Freeholder breaketh any condition, whereto he is tied, he forfeits his

his Freehold. *Co. of Copyhold f.* 44. Many other wayes may an eſtate of Freehold be forfeit, of which we ſhall not make mention here. And touching the forfeitures of goods theſe things are to be known for this purpoſe.

1 If a Felon ſtealeth goods, and upon purſuit made waiveth them, and leaveth them in any part of the Mannor, and be not attached upon the freſh ſuit of the owner, theſe goods are a waif, and forfeit to the Lord who may ſeiſe them. Waif.

2 If any beaſts be found wandring in any place, and taken up and proclaimed in three market Towns adjoyning, and not claimed by the owner within a year and a day, this is an eſtray and forfeit to the Lord. Eſtray.

3 If any ſuffer ſhipwrack on the Seas, and by the violence of the waves the goods are caſt upon the ſhore, and being ſeiſed by the Bailiff, are not claimed within a year and a day, this is wreck and forfeit to the Lord who may ſeiſe upon it. Wreck.

4 If any come to an untimely death without the fault of any reaſonable Creature, the cauſe of this death as a Deodand, is forfeit to the Lord; as a Deodand.

tree, or cart with horſes falling, or horſe ſtriking, theſe are all of them Deodands. And many other wayes may goods and chattels be forfeit, whereof we cannot ſpeak here. And theſe albeit they be not incident to Manors, yet muſt Lords of Manors claim, and may have them by Preſcription or Patent from the King. *Co. of Copyhold f.* 44. 45.

Chap. 41.

Of Eſcheat.

Eſcheat is where a Tenant in Fee-ſimple land dieth, not having Heir generall or ſpeciall to be capable of the Inheritance, in this caſe the Lord ſhall have it. Touching which, theſe things are to be known.

1 There are two cauſes of this Eſcheat. Firſt, attainder of the blood by doing of Treaſon or Felony. Secondly, fayler of the blood by extinguiſhment or Baſtardy.

2 There can be no Eſcheat of entayled land, but of Fee-ſimple land only.

3 There ſhall be no Eſcheat of things in Action, Uſes, Condition, Rights of Entr

Entry and Action, but of Land only.

4 If all the Heirs be dead, and there is no Heir to be found of the Land, or the Anceſtors blood is corrupt by Treaſon or Felony done by him; or the Anceſtor be a Baſtard and dye without iſſue of his own Body, for no other body can be Heir to him, nor can he be Heir to any other; in all theſe Caſes the Lord ſhall have the Land by Eſcheat.

5 If the Baſtard or Tenant be diſſeiſed, and dye without Heir, yet the Lord may enter: But if the diſſeiſer dye, or alien the land to another with good faith before entry, the Lord cannot enter. But in all other Caſes the Lord may enter for the Land, or maintain an Eſcheat for recovery of the Land, *Co. of Copyhold f.48. upon Litt.268, 312, 314.* *Quare.*

6 In Caſe of Treaſon the King ſhall have the forfeiture, and in Caſe of Felony he ſhall have year, day, and waſt: and then the Lord ſhall have it, and till then the Lord is not to have it.

7 But before the Lord in this Caſe is to take advantage of it, the Homage where there is a Court ſhall do well to Preſent it; and then Proclamation is to be made, That if any ſhall come in and

make a just Claim to it he shall be received, which no man doing, the Title is clear in the Lord, *Co. of Copyhold f* 84.

Our subject matter in hand being about the Profits of a Manor, the Services, Duties and Performances of the Tenants, and the payment of Rent being a speciall part thereof, we shall add this Title by way of Appendix alone and by it self, and so end this Treatise.

CHAP. 42.

Of a Rent.

What it is and the kindes thereof.

A Rent is a summe of money or other consideration issuing yeerly out of Lands or manuall Tenements; *Redditus a reddendo quia retrovit, vel a reddere, i. retro dare.* This differeth essentially from an Annuity, for a Rent doth always issue out of Lands or Tenements, and the Land also is the debtor. Otherwise it is of an Annuity which is chargeable upon the person of a man only, and he alone is the debtor for this, *Co. upon Litt.* 141, 142. *Plow.* 132, 138, 139. And of Rents there are said to be three kindes.

1 Rent

1 Rent service, which is, where a man doth hold his Land of his Lord by Fealty and certain rent, or to render and yeild hens, capons, roses, spurs, bows, arrows, horses, wheat, or the like; or to perform any Office, or yeild any attendance or the like: And to this rent distresse is incident of Common right. Rent service, what it is.

2 Rent Charge, which is where an estate is made or Lands or Tenements to another in Fee-simple, Fee-tail, for life or years, rendring a summe of money, or other thing to be paid yeerly to him that made it and his Heirs; and there is a Clause in the Deed, that if the rent be behind, it shall be lawfull for the Feoffor, Lessor or Donor to distrain for it upon the Land Or where one doth grant a Rent out of his Lands or Tenements to another in Fee for life or yeers, with such a power to distrain for the rent, if it be behind; and to this no distresse is incident of common right, but by the agreement of the parties, the Land is charged with the distresse; and hence it is called a rent charge. Distresse. Rent charge, what it is.

3 Rent seck is where a rent is reserved or granted (as in the Case before) without any Clause of distresse, Rent seck, what it is.

or power to distrain, and this is called *reditus siccus*, a dry rent; because he that is to have it, till he hath gotten seisin of it, he hath no remedy to recover it if it be denied to him; and then he hath no other remedy but an Assise for the recovery of it. *Termes of the Law. Rent. Co. upon Litt.* 142. *Litt. chap* 12. *Fitzches ley.* 155. *Do. & St chap.* 30.

And regularly, a man cannot have or challenge, or make a Title to any kinde of rent, unlesse it be a rent Service, or a rent charge in the case of Prescription, or for equality of Partition, unlesse he have a Deed to shew for it. *Co.* 6. 63. *Litt.* 40. *Co upon Lit.* 142. 146.

2 *What kind of Rent it is.*

Rent service.

IF one be seised of Land in Fee, and make a gift of it in Tail, or make a gift in Tail to one, the remainder in Tail to another, or a Lease for life or yeers, keeping the reversion in him, without any Clause in the Deed inabling him to distrain for it, this is a rent service. And if he in reversion grant away his reversion to another, and the Tenant attorn; this is a rent service still.

ſtill. But if the reverſion be gone, it doth continue no longer a rent ſervice, for there can be no rent ſervice, but where there is a reverſion, *Litt. Sect.* 214 215.228.229. *Plow.* 132. 142. *Co. upon Litt.* 162. Rent ſeck.

And therefore if one by Deed indented make a Feoffment in Fee to one, or a gift in Tail, or a Leaſe for Life or years, to one with the remainder over to another in Fee, and reſerve a rent upon any ſuch eſtate without any clauſe of diſtreſſe for not payment; this is a rent ſeck, not a rent ſervice. So if one ſeiſed in Fee of Land by Deed Poll or Indenture, grant a rent iſſuing out of his Land without any clauſe or diſtreſſe for not payment; this is a rent ſeck. *Litt. Sect.* 214,215,217. *Co.* 6. 58. *upon Litt.* 150. 151.

If there be Lord and Tenant, and the Lord grant the rent except the Fealty (which is incident to every rent ſervice) this is a rent ſeck, *Perk. Sect.* 113. So if one hold his Land by Homage, Fealty and other Services, yeilding a rent, and the Lord grant away the rent, reſerving the Services, or grant the Services, ſaving the rent; in theſe caſes the

rent

Rent is a Rent seck. *Litt. Sect.* 226. 227, *Co. upon Litt.* 151.

If one Lease Land to another for life rendring Rent; and after he in reversion grant away this Rent to another; this during the life is a Rent seck. *Litt. Sect.* 228.

It is said if a man grant a Rent out of three Acres and grant over, that if the rent be behind, that he shall distrain for the rent in one Acre; this is a rent seck in all, and yet he may distrain for this in the third Acre. So if a rent be granted to one and his Heirs out of an Acre of Land, and that it shall be lawfull for him to distrain for Term of his life; this is a rent charge for his life; but after a rent seck. But if it be that he shall distrain for a certain number of yeers; this is a rent seck alwayes. *Co. upon Litt.* 147.

Rent Charge. If one devise a rent by Will in Fee-simple. Fee-tail for life, or for yeers without any clause of distresse; this is a rent seck: but if it be with a clause of distresse, it is a rent charge. *Co.* 6. 56. *Dyer* 348.

If one make a Feoffment in Fee, gift in tail, lease for life or yeers of land to one,

one, or a gift in tail, leaſe for life or yeers, with the remainder over to another in fee, and upon any ſuch eſtate reſerve a rent, and in the Deed there is a power to diſtrain in the Feoffor, Donor or Leſſor, if the rent be behind; this is a rent charge, *Co. upon Litt.* 143. *Plow.* 132. *Litt. Sect.* 217. So if one by Indenture or Deed Poll, grant a yearly rent to be iſſuing out of his Lands to another in Fee-ſimple, Fee-tail, for life or years, with ſuch a power in the Deed, 13 *Ed.* 4. 6. 5 *H.* 6. 6. *Litt. Sect.* 218. So if the Tenant of the Land chargeable with a Rent ſeck, grant a power to diſtrain upon the Land for the rent to him that hath it; this is now become a Rent charge, *Dyer* 348.

So if one Coparcener upon a partition to make an equality, agree that the other ſhall have a rent out of his part of the Land; this is a rent charge for which the other may diſtrain, though there be no Deed for the Rent, nor Clauſe of diſtreſſe in a Deed, 15 *H.* 5, 5.

3. *What*

3 *What shall be said a good rent by grant or reservation, or not; and how it shall be taken.*

In respect of the thing out of which it is grantable.

IF a Feoffment, gift in Tail, or a Lease, be made of a Mannor, Lands, Medowes, Pastures, Mill, or any such like corporeal hereditament rendring a rent, or a rent be granted out of any such thing, it is good: So if it be out of the vesture or herbage of Land, or a rectory or a mesualty. But a grant or reservation of a rent out of a thing not maynorable: as a Fair, Market, Rent, Tyths, Advowson, Hundred, Fishing, common Office, the next avoydance of a Church, right of Land, Corrody, Multure of a Mill, Franchises and the like incorporeal Hereditament, is not a good rent; for a rent must be alwayes reserved out of such a thing to which the party may resort for a distresse, *Co.* 7. 27,38. *Co.* 4. 10,49. *Plow.* 157. 138. *Co.* 1 *part.* 47. And yet if one be seised of a reversion or remainder of Land after a Lease for Life, or years, or gift in tail, and grant or reserve a rent upon this Land; this is a good rent, and when it comes in possession either by determi-

nation

nation of the time in course, surrender, or otherwise, it will take hold of the land. *Co. upon Litt.* 144.47. *Plow.* 198.

If one that hath but a Lease for years of land, make a Lease of it tendring rent or grant a rent out of it; this is good during the Term: And if he grant for longer time, it is good during the Term. *Co.* 2.36. 14 *H.*7. 2. But if one be seised in Fee of white Acre, and possessed of a Term in black Acre, and grant a rent out of both these for life, this rent shall issue out of white Acre onely: Yet both the Person, and both the Acres shall be charged as long as the Term lasteth; and after the person and white Acre onely. *Co. upon Litt.* 146. *Co.* 7. 23.

If one be deseised of land, and after grant a rent out of it; this is void. And yet if the grant be by Fine or Indenture, it may be good by way of Estopell. *Co.* 2. 53.

If one grant a rent reserving a rent, or grant a rent issuing out of another rent; these grants and reservations as to create a rent are void. *Co.* 10.60. 1. 59. And yet in the cases before of a rent granted or reserved out of things not may-

maynorable, albeit the grant or reservation cannot be good as to the creation of a rent to charge the thing out of which it doth issue; yet it will be good to create an Annuity to charge the person of the grantor. *Kelw.* 161. *Co* 6. 58. 10. 93.

Annuity.

In respect of the manner of granting or reservation.

A rent may be granted or reserved by Fine or a Deed of bargain and sale, as well as upon a Deed of Feoffment or Lease *Co.* 2. 72. *Sta.* 27 *H.* 8. *chap.* 10. *Co upon Litt.* 144. 193. A rent may be reserved on a release that doth enure to enlarge or make an estate; but not upon a release that works by way of extinguishment or *mitter de droit*. A rent may be granted by will also, and therein also may be given a power to distrain as well as by Deed. *Co.* 1. 84. *Dyer* 348. But it cannot be had or claimed, nor is it grantable but by Deed except in some speciall cases. *D & St.* 86. *Brv. Reservation.* As upon a partition of land, and by a speciall Prescription that he and his Ancestors whose Heir he is, have been seised of it, and used to distrain for it. *Co. upon Litt.* 146 144. *Co.* 6. 58. 63.

If one having an estate in white Acre grant xx s. out of [or from] white acre; or xx s. of Annual rent of *I. S.* yearly taken

taken from white Acre, or to be taken at white Acre, or to be taken in or at white Acre; or out of his Coffers with a clauſe, that if not paid he ſhall diſtrain in white Acre for it. Or thus, I oblige my ſelfe to *I. S.* and his Heirs, in an annual rent of x. l. which I take of my Manor of *S.* and I oblige my Manor foreſaid to be niſtrained. Or thus, if one have a Manor and ſay, I oblige my Mannor of *C.* and all the goods in the ſame Manor being mine to *I. S.* &c. in annual rent of xx. s. to be diſtrained by the Baily of our Lord the King for the rent foreſaid. But if one by Deed in a way of Covenant to pay x.li. a year, and not by way of reſervation or grant to do a thiug as often as default ſhall be that he ſhal forfeit x.l. theſe and ſuch like are not rents, but ſums in groſſe, nor recoverable as rents, but by action of debt or covenant. *Dyer* 361. *Pl.* 133. *Dyer* 24. And if one grant 40 li. a year out of his coffers, or out of his cleer gains, or out of the land of a ſtranger, or out of a thing not chargeable with rent; in theſe and the like caſes it is not a rent but an Annuity chargeable on the perſon onely. *Co.* 6. 58. 10. 93. All grants of rents after either of

Summe in groſſe.

Annuity.

of these, or in any such like form, may be good to charge both the person and land. 46 *Ed.* 3. 48. *Co.* 7. 23. *Kelw.* 161. 4 *Ed.* 2. 15. 46. 22. *Ass.* 66. 21 *H.* 7. 4. *Dyer* 45. 26 *H.* 8. 5. *Co. upon Litt.* 245.

If one grant a rent out of all his lands and that if it be behinde, he shall distrain in white Acre for it; this is good to charge the person and white Acre only; not any other land. *Co.* 7. 23. So if he grant it out of one Acre and it be behinde, that he shall distrain in another Acre; both the Manors are charged, the one with the rent, the other with the distress for the rent, *Co. Inst.* 147 9 *H.* 6. 9. If one grant to another that he shall distrain for a rent of 40. s. a year in white Acre if it be not paid him yearly at Michaelmas; this is good to charge this land, but not to charge the person of the Grantor. *Plow.* 139. *Co.* 7. 24. *Litt.* 219. 220. If I have twenty Acres of land and grant a rent of xx s. to be taken of every Acre of land; this is a good grant, and severall out of every Acre xx s. xx li. in the whole. *Co. upon Litt.* 147.

If a reservation of rent be in a Deed, and say not to whom, yet this is a good rent, and shall continue as long as the estate,

eſtate. and ſhall go to the Heir or him in reverſion. *Dyer* 45. *Kelw.* 88. But if it be rendring a rent to a ſtranger who is no party to the Deed, this is void 27 *H.* 8. 19. And yet if he be a party to the Deed, although he have no intereſt in the land it is good enough, *Bro. Reſervation* 15. 12. *Plow.* 55. And if the reſervation of the rent be to the Leſſor, and a ſtranger who is no party to the Deed, it is void as to the ſtranger, and the Leſſor ſhall have the whole. So albeit the Leaſe be made by the Father, and his eldeſt Son rendring rent to the Son, or a Leaſe to begin after the Fathers death, rendring rent to the Son. *Trin.* 12 *Jac. Oates Caſe Adjudge.* If the eſtate be void upon which the render of rent is made, the rent is void alſo. 14 *Car. B. R.* If lands be given in franck marriage reſerving a rent, the reſervation is void till the fourth degree be paſt; and then it is good, 26. *Aſſ.* 66.

If one ſeiſed in Fee of land grant a rent out of it to *I. S.* for life, and after a clauſe that he and his Heirs may diſtrain in the land for the rent; this is a good new grant of a new rent in Fee-ſimple over and above the grant for

life. *Coke upon Littleton*, 147. 148.

If one by Deed indented demise to *A.* for life with divers remainders over, rendring therefore to the Lessor and his heirs a rent; this reservation shall extend to all the estates, and if he in remainder accept the estate, he must pay the rent. *Co.* 10. 107. 5. 113. And if one Lease for a year with these words; and if the parties shall agree for a new Lease for longer time then for three years: rendring during the Term foresaid: This reservation shall extend as well to the first year as to the three last years. *Co.* 10. 106.

If one grant a rent charge out of his land, provided that it shall not charge his person in an Annuity, that is a good rent as to charge the land, but not the person. And yet if it were without clause of distresse with such a *proviso*, the *proviso* were void unlesse the grantor did give the Grantee seisin of the rent at the time of the grant. *Co.* 6. 58. *upon Litt.* 146.

4 *The remedy or means to recover a rent, and the arrearages thereof.*

IF one have a Freehold rent and have gotten actuall seisin thereof, and be after

after disseised of it, he may have an assise to recover it, and damages for it, which in an Assise he shall recover, but in a Rescous he shall recover damages onely, and the thing distrained shall be taken as a distresse. But if one that never had seisin of a rent distrain, and a Rescous be made, he cannot have an Assise, but he must have a Rescous, *Co.* 1. 97. And here note that the disseisin of a rent is when the party is disturbed in the means of recovery of his rent, which for a rent charge is said to be five wayes.

1 By Rescous, which is when the party is distrained, and the distresse is rescued, or being upon the land to distrain cannot be suffered.

2 Replevin, which is when an Action of Replevin is brought upon the distresse taken.

3 Denier, which is the denying or not payment of the rent on the land when it is required.

4 Inclosure, which is when the party doth come to the place whence the rent doth issue; or he hath power to distrain and it is inclosed by walls or the like that he cannot come at it; but if it be not newly, but were anciently inclo-

ſed, then were it no diſſeiſin.

5 Foreſtalling, which is when the party is going to diſtrain for the rent, and the Tenant hearing of it doth foreſtall the way with force and armes, or threaten to kill or wound, ſo that he dare not go to diſtrain. The diſſeiſin of a rent ſervice is ſaid may be by Reſcous, Replevin and Incloſure. The diſſeiſin of a rent ſeck is ſaid to be by denying, incloſing and foreſtalling. *Coke upon Litt.* 160. 161. 153. *Litt.* 236. 237. 239. 240.

In ſome caſes a man may have an Aſſiſe to recover his rent; in ſome caſes he may diſtrain; in ſome caſes he may have an Annuity or an Action of debt; in ſome caſes he may reenter upon the land for not payment of the rent; and in ſome caſes he hath his choice to do the one or the other: but in caſe where a man may diſtrain, he may not diſtrain in any place but there where the diſtreſſe is given *Litt.* 48. *Plow.* 239. nor may he diſtrain after the eſtate is ended; nor may he diſtrain and keep the goods againſt a Replevin; albeit the Deed ſay he ſhall keep the diſtreſſe againſt gages and pledges, *&c. upon Litt.* 145. 282.

If

If one at Michaelmas make a Leaſe for yeers rendring rent at Michaelmas or ten daies after, in this caſe the Leſſor may bring an action of debt for the laſt yeers rent, and ſuppoſe it to be due at Michaelmas, *Barwicks Caſe Trin. 9 Jac.*

If a Leaſe be made rendring rent on condition of reentry for not payment, and the Leſſor reenter, yet he may bring an Action of debt for the rent. And in the caſe where a Reentry is given if the Leſſor make a demand duely; if after he receive the Rent, yet it ſeems he may enter upon the Land. *Kelw.* 112. 153.

The Lord may diſtrain for a yearly rent due from a Freeholder, but he may not have an Action of debt for it, or for any corporal ſervice as long as the ſame doth continue; but when the rent is ended, an Action of debt will lie, *Co. of Copyhold* 50. But ſome ſay that for a rent ſervice due upon a gift in Tail or Leaſe for life; he may onely bring an Aſſiſe or diſtrain; and that an Action of debt lieth only for a rent ſervice reſerved upon a Leaſe for years, *Litt. Sect.* 213. 331. *Perk. Sect.* 693. Rent ſervice.

If one that hath a Leaſe of Land for

yeers, grant it over for a part of the time rendring rent; in this case the Lessor may distrain or have an Action of debt for this rent; and therefore it is taken for a rent service, *Plow* 526. 9 H. 5. 8. *Perk. Sect.* 693.

Rent charge.

If a rent charge be unpaid, the party that ought to have it may in some cases have an Assise for it, and in all cases either distrain for it, or he may bring an Annuity against the person of the Grantor, at his election, except one of the remedies be prevented by the Originall agreement; as where a rent is granted, provided it shall not charge the person of the Grantor, &c. But where the party hath a double remedy he may not make use of both; for if in case where the person is chargeable and the Writ of Annuity doth well lie, if he bring this Writ or an Assise where it lieth, and make his plaint in the Assise, or declare upon the Writ of Annuity; by this the Land is discharged for ever. And if he once distrain and avow for it in a Court of Record, by this the person is discharged for ever. But the bare purchase of the Writ of Assise or Annuity onely doth not determine the election,

on, *Dyer* 344. *Litt. Sect.* 219. *Co.* 7. 34. *Plow.* 13. *Dyer* 362. *Co. upon Litt.* 145.

If one have a rent charge for yeers, and the Tearm expired, in this case he cannot distrain for the rent; *per* two Justices, *Pas.* 10 *Car. B. R.* but he must have an Action of debt for it.

If a rent charge be granted with *proviso*, that it shall not charge the person of the Grantor, and the rent is behind, and the estate is determined, so that now he may not distrain for it; in this case he may bring an Action of Debt, and charge the person, *Co.* 7. 37. *Dyer* 227.

If one have a rent seek and it be not paid, he may distrain for it in three cases. First, where a woman hath it in part of her dower. Secondly, when a King is to have it. Thirdly, when a Parcener is to have it to make an equality of partition. But in all other Cases there is no remedy for recovery of a rent seck but by an Assise; nor can this be had neither, till he have got seisin of the rent in a legall way, *Kelw.* 104. *Co.* 7. 28. 6. 56. 58. *Litt.* 235. Rent seck.

5. *Who shall have the rent and remedy, and upon whom shall it be charged or not.*

THE rent in most cases doth follow the reversion of the land if there be any, as the shadow doth the body. *Co.* 5. 55. *Dyer* 5. Recoverers upon common recoveries shall have the same remedy for their rents by distresse or action of debt against the Lessee for yeers before attornment as the recoverees had, *Stat.* 7 *H.*8. *chap.* 4 *Co. upon Litt. f.* 104.

Executors shall have the like remedy for rent charge, and rent services due to their Testator as their Testator had; and for the arrearages due in their Testators time, they may distrain the Tenant of the land whether he be Heir or Feoffee to him that should have paid it, or Heir or Feoffee of the Heir, or Feoffee and so infinitely, issues in Tail or *Cestuy à que use*, or any other that come into the land from or under him that should have paid it, *Stat.* 32 *H.*8. *chap.* 37. If I make a Feoffment in Fee, gift in Tail, Lease for life or yeers of land rendring rent to me, or a rent be granted out of land to me in Fee, in Tail or for life, and the rent be in arrear, and I make my executor

ecutor and die, and the land or rent descend to my heir; my executor and not my heir shall have it, and the action of debt for it, *Co.*4.48.50. *Dyer* 375. *Co. upon Litt.* 162. If a rent be granted to me, my heirs and executors during the life, of *I. S.* and for one half yeer after; in this case my executor shall have this half yeers rent, *Curia M.*7 *Jac. Co. B. Watts Case.* But if a Lease be made for yeers rendring rent to the Lessor and his heirs at Michaelmas, or within ten daies after; and the Lessor during the Tearm doth hap to die after Michaelmas before the ten daies be expired, in this case the heir not the executor shall have the yeers rent, *Hil.*7. *Jac. Curia B.R.* And if within the ten daies he had granted away the reversion and the Tenant had attorned, the Grantee of the reversion shall have the rent, *Co.*11.12. If one seised in Fee of Land make a Lease for yeers of it rendring rent, and then devise the rent to a stranger by will and the Devisee die; in this case it seems the executors must have it, not the heir, *Dyer* 5.6. If the reservation of the rent be to no body, the arrears shall goe to the executor, and the rent forwards as in the cases before. So if

the

the reservation be to him or his Heirs, *Dyer* 204. If one seised in Fee of a house, and make a Lease thereof, and of certain implements therein for years, rendring rent to him, his heirs and assignes, and the Lessor die, in this case the rent shall goe to the heir all the time: But if the Lessee had covenanted to pay so much money during the time; this summe had gone to the executor, *Dyer* 361. 275. And if one grant a rent for life out of his land, and the rent is arrear in diver Feoffees time one after another, and the Grantee die, his executors may have an action of debt against every one of the Feoffees for his time. But if a Tenant in Tail make a Feoffment and the discontinuee charge the land, and after enfeoff the issue in Tail and die, the issue is remitted to his first estate, and shall not be charged with this rent, *Co.* 7. 37. So if one have a rent charge or rent service in Fee, or for life and it be arrear, and after he grant away the rent to another, and the Tenant attorn, and then he die; in this case the executor shall not recover the arrears, but they are lost, *Co.* 7. 37.

If one have a rent charge or rent service *pur auter vie*, and the *cey' que vie* die,

die, yet the party may have his remedy against the occupier of the Land by distreſſe: As if one deviſe a rent out of land by will, with clauſe of diſtreſſe to *B.* for the life of *C.* and the heir to whom the land charged doth deſcend, doth Leaſe it to *D.* the remainder to *E.* in Fee and the rent is behind in the life of *D.* and *D.* die, and after *C.* die: now in this caſe the land in the hands of him in the remainder ſhall be charged with theſe arrears, and the party may diſtrain for them, *Stat.* 32 *H.*8.*ch.*37 *Co.*6.118.

All arrerages of rent incurred and due to the wife before or after marriage, the husband ſhall have if he ſurvive her; as if ſhe be endowed of a rent, and take a husband and die, he ſhall have the rent arrear during the coverture and remedy by the Statute of 32 *H.* 8 *Co.* 4 51. *Super Litt.* 3 51. So if he make a Leaſe of his wives land rendring rent, and ſhe die, he ſhall have the rent due in her life time, 9 *H.*6.52. And yet if the husband be ſeiſed of a rent in the right of his wife and the rent incur, and the husband die, in this caſe the wife ſhall have the arrears: by 3 *Juſtices* 22 *Jac.B.R.*9 *H.*6. 43.22 *Ed.*3.40. If any rent charge, or

rent

rent service be due to any single woman who doth after marry, or to any married woman during the coverture; in these cases the husband, his executors or administrators shall have the same remedy by distresse or action of debt as the wife had. As if a feme sole have a rent charge granted to her for life, and the rent be behinde, and after she take a husband, and the rent be behinde again, and she die, the husband may recover both these rents, *Stat.* 32 *H.* 8. *Ch.* 37. *Co.* 4. 50. *F. N. B.* 121. *Co. upon Litt.* 162. If one grant a rent charge to *A.* and *B.* for 21 yeers if the Grantor live so long; and after *A.* and *B.* entermary, and then the rent doth incur, and *A.* die, and after more rent doth incur; in this case the woman and not the executor of her husband shall have all the rent before and after the husbands death, *Hill.* 22 *Jac. B. R.* The Court in *Burgers Case* 33 *H.* 6. 20. If a woman and her second husband Lease the Land she was endowed of by her first husband, rendring rent, and this is behind and she die the second husband not the heir of the first husband, shall have this rent, *Broo. Rent.* 10.

If a man seised of a Tearm of Land for

for 20. years in the right of his wife, leaſe the ſame Land for 10. years to a ſtranger rendring rent, the rent is behinde, the husband die, it hath been ſaid the Wife and not the Executor ſhall have the rent, *Perk. Sect.* 834. But the contrary hath been adjudged *inter Blaxton & Heath* Kings Bench *Co. upon Lit.* 46. 35. Yet the wife ſhall have the reſt of the Tearm. If the husband be poſſeſſed of a Tearm of land in the right of his wife, and he let part of it rendring rent and die, the wife ſhall not have this rent, but the Executor of the husband, *Dyer.* 180. 107. 104.

If *A.* a Tearmor die, and make *B.* his Executor; and *B* make a Leaſe of part of the Tearm to *C.* rendring rent and dye inteſtate, and *D.* get an adminiſtration of the goods of the firſt Teſtator; in this caſe *D.* ſhall not have the rent, by *Juſtice Haughton Hill.* 18 *Jac. B. R.* becauſe he comes about it. And if *A.* Tenant in taile diſcontinue to *B.* who doth leaſe to *C.* for years rendring rent, arrearages doth incur, *A.* dies, his iſſue doth recover againſt *B.* in a *Formedon.* Yet the Leſſee ſhall pay the arrearages to *B.* by *Juſtice Houghton* 18 *Jac. B. R.*

If

If one seised of land as heir of the part of the mother and make a Feoffment in Fee of it, rendring rent to him and his Heirs; this rent shall go to the Heirs of the part of the fathers, but if it had been a Lease for life, or gift in tayl, it had gone to the heirs of the part of the mother. If the husband have a Lease in the right of his wife rendring rent, and the rent is behind during the Coverture, and she die; in this case he shall be charged by a suit for this rent after her death. *Kelw.* 61. to *H.* 6. 11.

6. *Where a rent shall be said to be determined and extinct in all or part, or not; but shall be apportioned, and where it shall be apportioned, or not.*

Where the estate to which the rent is annexed doth determine, there the rent as to the land is determined. And yet there in some cases the person shall be charged after with it in an Annuity. If there be a Lessee for life or years determinable upon life, and this Lessee make a Lease for years reserving rent to be paid at the 4. quarter Feast, and the life die, the rent is gone; and if he die before the quarter day, the quarters rent is gone, *Co.* 10. 127. So if one make

make a Leaſe at will rendring rent, and after the Leſſor doth determin the Will, the rent is gone. *Tearmes Ley.* So if a rent be granted in reſpect of an Office, and the Office be determined, the rent is gone. *Plow.* 381. If all the land, out of which the rent iſſueth, be recovered from him that hath a Title before the day of payment; as if there were a Judgement againſt the Leſſor before the Leaſe and after the Leaſe, execution is ſued out by an *Elegit* or otherwiſe: ſo that the Leſſee is rightfully evicted out of all the land, or a Diſſeiſor charge the land, and the Diſſeiſee doth recover it in an Aſſiſe or the like; in theſe caſes all the rent is gone. But if the eviction be but of a part of the land, there ſhall be an apportionment of the rent. And if one that hath land rightfully charge the land, and another that hath no right doth recover it in a fained action, this will not determine the rent. *Co.* 10. 127: *Plow.* 71. 134. 37 *Eliz. B. R. Dayes Caſe.* And if a diſſeiſee releaſe his right to the Diſſeiſor after his grant of the rent charge, the rent will continue. But if the diſſeiſee enter and make a Feoffment by this the rent is gone. *Co. upon Lit.* 177.

If

If a rent be granted to one, and his Heirs in Fee, or to a Corporation in Fee, and the man die without Heir, or the Corporation dissolved, it seems the rent is gone; 27 *H.* 8. 10. If *A.* give lands to *B.* and the Heirs of his body rendring rent, and *B.* doth bargain and sell the land to *C.* and his Heirs; and therein Covenant that *C.* shall enjoy it after the Annuntiation of *Mary* next free from all incumbrances, and before that day a common recovery is had against *C.* in which *B.* is vouched to the use of *C.* and his Heirs, in this case the rent is not gone, *Hill.* 20 *Jac. B. R. Greenway* and *Tuckfields Case. Ewre. Case* 42 *Eliz. Co. B* For this rent is reserved by the donor before or at least at the time of the entaile made; and is as if Tenant in taile grant a rent charge out of the land, and then suffer a Recovery, this doth affirm the rent: or as when the Lord Paramount doth purchase the Tenancy Paravaile, the Mesne shall have the rent, But if after the entail made, the Donor doth grant a rent out of the Reversion, and after the Tenant in tail suffer a Recovery; in this Case the rent is gone. *Co.* 1. *in Capels Case.*

If

If Lessee for life make a Lease for yeers rendring rent, and after the Lessee for life surrender his Lease, the rent is gone by *Ch. Justice Bridgman*. But if one make a Lease for yeers rendring rent, and after grant the rent to *I. S.* and the Tenant attorn, and after the Lessee for yeers doth surrender, yet the rent doth continue, and it seems he may have an Action of debt for it. So if Lessee for yeers of land grant a rent-charge out of the land, and then surrender his estate; the rent is not gone, *Co.* 8. 144. 20 *Ed.* 4. 13. *Plow.* 198. If there be a Lessee for life rendring rent, and the Lessor confirm the land to the Lessee and his Heirs without any reservation of rent; in this Case the rent is gone, *Bro. extinguishment* 28.

If two Joyntenants be, and one of them grant a rent out of the land and die, in this Case the rent is gone, and the Survivor shall hold it discharged. But if the Survivor had accepted a release of the right of his companion, contrary, *Co.* 6. 18.

If one have a rent charge issuing out of land to him and his Heirs, and he purchase the Fee-simple of all or any

part of the land, out of which the rent doth issue; by this the rent is gone for ever, *Co.* 4. 38. *Dyer* 35. *Dyer* 45. So if the whole land descend to him in Fee-simple, the rent in future is gone. Otherwise it is where the Father doth purchase but part of the land, out of which the rent doth issue, and this land doth descend upon the sonne, here the rent is not extinct but apportioned, *Co.* 4. 49. and he hath not so much as an Annuity left for his money, *Co. upon Litt.* 148. As he hath in case where the discharge is by Act of God, or by Act of Law; for there though the rent be gone, yet a writ of Annuity will lie for the rent to charge the person; as if *Tenant pur autre vie* grant a rent charge to one for 21 yeares, and *Cestui que vie die*, the rent is gone as to the land, but the person chargeable during the Term. So if the land out of which the rent issueth is recovered by one that hath an elder Title, *Co. upon Litt.* 148. But if a man that hath a rent service purchase part of the land, out of which it goeth; in this Case the rent if it be severable shall be apportioned, but if it be an individable rent, as a Horse or the like, it is all gone. *Litt.*

Sect. 222. And if the Grantee of a rent charge, purchase part of the land, and the Grantor by his Deed reciting this purchase, doth grant that he shall distrain in the residue, by this the rent may be created again. *Co. upon Litt.* 148. And yet if he that hath a rent charge release part of it to the Tenant of the land and reserve the rest, this is good for the rest. Or he may grant away part of it, and with the attornment of the Tenant this will be good, and the rent shall be divided, *Co. upon Litt.* 148.

If a man make a Lease for life or years, reserving rent; and the Lessee surrender part of the Land to the Lessor; in this Case, the rent is not gone, but shall be apportioned. So if the Lessor recovereth part of the Land in an Action of Waste, or entreth into part for a forfeiture, the rent shall be divided. So if the Lessor grant part of the Reversion to a stranger, the rent shall be apportioned. So if Tenant by Knights service, devise by his Will, the Reversion of two parts of his land; in this case the rent shall be divided, *Co. upon Litt.* 148.

7 Where a demand or request, or a tender of a Rent is necessary, or not.

To have an action or distresse for any Rent.

AN Action may be brought, or a distresse taken for a rent charge or rent service, without and before any demand made of it. But an Assise cannot be brought for a rent seck and the arrerages thereof, untill the rent be demanded. And if by the Deed or Will, by which the rent is created to be paid upon the Land, it be set down that the rent charge or rent service before a distresse be taken, must be demanded; in this case there need not to be a Demand, but if it be payable at another place out of the Land, *Contra*, *Dyer* 348. *Co.* 7. 38. *Kelw.* 153. *Co. upon Litt.* 144. 202. *Co.* 6. 58. *Seldens Case* 17 *Car. C. B.* If a rent be granted with condition that if it be Arrear, the Grantee shall distrain; in this Case the Grantee need not demand it, *Plow.* 70.

To have a Reentry, or *Nomine pene.*

In most places where a common person would enter into Land upon a condition for not payment of rent, or will have a penalty or *Nomine pene* of a greater summe forfeit for not payment of the

the rent being a leſſer ſumme, there muſt be a demand duely made of the rent ere he can enter, or have the *Nomine pœnæ*. *Co. upon Litt.* 153. 301. 202. *Co.* 4. 72. And this holdeth true though it be not expreſſed in the Deed that it ſhall be demanded: And albeit no man be upon the land to tender it, and albeit the rent be payable out of the Land and County; and yet if the agreement be expreſſed, that if the rent be behind, he that is to have the rent ſhall enter, or the eſtate ſhall ceaſe without demand: here perhaps a demand may not be needfull. *Dyer* 329. 13. 79. 51. *Co.* 6. 56. *Plow.* 172. 70. *Co.* 10. 129. 2 *H.* 7. 14. Yet I have ſeen the report of a Caſe thus: If a Leaſe be made rendring rent, and that if it be behind, the Leſſee ſhall forfeit three ſhillings four pence in name of penalty, that in this Caſe there needs no demand as in the Caſe of Reentry. *Trin.* 36. *Eliz. Co. B. Thins Caſe.*

If I deviſe Land by Will to *I. S.* on condition he pay 20 li. a year out of it to *K. L.* at two Feaſts; in this caſe there needs no demand, *Dyer* 348. But if one deviſe a rent by Will to *I. S.* and willeth that if it be not paid, the Executors on

I. S. shall have the land; in these Cases there must be a demand, *Molineux case Pasch. 3. Jac. B. R.*

If a rent be granted with condition to Reenter, or *Nomine pœnæ* for non payment; he that is to pay the rent, must take care to tender it to save the forfeiture, 2 *H.* 7. 8.

8. *What demand or tender must be made; and how, and what shall be said a good demand or tender of Rent or not.*

In all Cases where a request or demand of Rent is needfull, it must be duly made in all circumstances, or it will not be sufficient to give a man any advantage.

The demand of a Rent seek to inable an Action must be made thus: After the rent is due and seisin had of it, the party to have it, or some body for him must be upon the principall place in the land, the last part of the day of payment: or if no tender be made of it on that day, then at any time after the day, and there demand the Rent; and if the Tenant or some other for him be not there ready to pay it, this is a denyall in Law, upon

which

which he may have an Assise, and therein shall recover the rent and arrearages thereof, and costs and damages. But if there were a tender by the Tenant, the last part of the day, and no body to receive it; in this Case he hath no remedy for the present, unlesse he can meet with the Tenant of the Land in some part of the Land: and therefore in this Case, the best way is to be on the Land the next day of payment, the last part of the day, and then demand the rent and arrearages thereof; and if no body be there ready to pay it, this is a denyall on which he may have an Assise, *Litt.* 235. *Cr.* 7. 28. *Co. upon Litt.* 153, 154. A demand to enable a distresse may be made at any time after the day, and is good enough, *M.* 40. 41 *Eliz. Stanleys case Co. upon Litt.* 144. 153.

The demand of a rent to gain a Re-entry into Land, or *Nomine pœnæ* must be made thus: First, by and of the right persons, and for this, these things are to be known.

1. If a Lease be made for years rendring rent on condition, that if it be arrear fourty dayes after the day, that the Lessor and his Heirs shall reenter, and

the Lessor demand it and after die; this is a good demand, and his Heir shall take advantage by it, and may enter. But if the Lessor die after the day, and then the Heir demand it, *Contra D. & St.* 35. 13 *H.* 4. 17.

2. If two make a Lease, rendring rent on condition, that if it be behind and demanded, they shall reenter, and one of them die, the Survivor may demand it. Or if the Lease be made to two on such a condition, and one of them die, the rent may be demanded of the Survivor of them, *Bro.* 207. 41 *Ed.* 3. 16. and accordingly a Tender may be made of rent. And therefore a Tender to one Joyntenant or Copartner, or by one Joyntenant is held to be good, *Bro. Tender* 10. 19.

3 The party that is to demand, may do it by his Attorney or Servant, as well as by himself.

Secondly, for time. it must be made the last day given for the payment thereof, and the last part of the day so long before the Sunne set, and it be dark, that the mony to be received may be conveniently numbred by day light, and he must continue his demand till it be night

night, and the Lessor is not bound to demand at any other time. *Co. upon Litt.* 282. *Nov.* 198. *Co.* 4. 72. *Plow.* 172. *Dyer* 329. 130. *Co.* 6. 56. When the Lessee hath two times given him for payment of his rent, as when the Lease is rendering rent at Michaelmas, or within ten dayes after, or in like manner, in this Case the demand must be made the last part of Michaelmas day, and the last part of the ten dayes. For if the Lessee tender it the first day, and the Lessor be not there, and he tender it not the last day, and the Lessor demand it at this day only; this is not sufficient, for the Lessee hath an election to pay it on which of the dayes he please. But if the last day be put in the condition, onely provided, that it be behind ten dayes after, the Lessor shall reenter: in this Case it need not be demanded at Michaelmas, but may be demanded the last part of the ten dayes onely, *Perk. Sect.* 836. *Bro. Tender.* 41. 2 *Henr.* 7. 14. *Co.* 7. 28. 10. 29. *Coke upon Littleton* 207. And then and not at any other time the party that is to pay the rent is bound to render it, when he that is to receive it is bound to demand it,

Bro.

Bro. Tender 23. *Co. upon Litt.* 211. But here we must observe that there are four times of payment of rent. First, voluntary, but not satisfactory, and yet good to some purpose, as if Lessee, Donee, &c. pay the rent before the day; this is good to give seisin to enable him that hath it to bring an Assise. The second time is voluntary, and satisfactory in some cases, as if it be paid the morning of the last day, and the Lessor die, before the end of the day; this is good against the Heirs and Executors. The third is the legall and absolute satisfactory time, which is a convenient time before the last instant of the last day, and then it must be tendred. The fourth is satisfactory, but not voluntary, but coercive, and by suit, *Coke* 10. 127.

2 For place, the demand must be made upon some part of the Land, out of which the Rent doth issue, (if no other place be expressed) and upon that part which is most notorious; as at the Porch and fore-Door of the Capitall Messuage (if any be) and not at the back-Door, or at another House. And if no house be, then at some gate or stile upon some high way going through

through the Land; or if one place bee as notorious as another, then at either of them, or there, and not elsewhere the Rent must be tendred. And if there be two places of payment, as yeilding the Rent at such a Stile, or in the Church of Dale or Sale, or in the House, or the like; there demand must be made at both, for the Lessee may render at either at his choice, and where he may tender, the other must require it. So if it be paying at or in a place, the demand must be at or in the place. And if by expresse agreement it be to be paid at a place out of the Land, the demand must be at the most eminent place there where it is to be paid, and then it need not be demanded on the land, *Co. upon Littleton* 201. 158. 153. 202. 10. 129. 4. 72. 6. 46. *Dyer* 349. 72. 136. *Noy* 98. And the Lessor is not bound to demand it in any other place, nor is such a demand good. *Bro. Tender* 11. And though the door of the house be open, and the party that is to demand see him, that is to pay in the house, he need not goe in to demand it, but it is sufficient to doe it at the door. *Coke super Litt.* 153. And there and not at any other place the party that is to

pay

pay the rent is bound to tender it when he to whom it is to be paid is to demand it, *Plow.* 172. *Coke upon Littleton.* 201.

For time. 105. But by agreements of the parties it may be tendred, and received before the day in any place, *Perk. Sect.* 836, 837, 838. And so perhaps at the day, if the agreement be made of as high a nature, as the first agreement was.

For the manner. 3 For the manner of the demand, he must then and there by himself or some other for him, make an actuall or verball demand of the rent; and therein it is good to say how much it is, and to set forth his readiness to receive it after this manner.

Here I demand of *I. S.* ten pound rent due to me at the Feast of, &c. for a Messuage, &c. which he holdeth of me by Lease, &c. And there let him remain untill it be so dark, that he cannot see to tell the money. But a demand of more then the rent, is a good demand of the rent, *Dyer* 329. 130. 19. 51. *Plow.* 70. *Noy* 98.

And accordingly, he that maketh tender of rent, must make a reall tender; and it is not sufficient to doe it in shew onely, for he must prove he had, and ten-

tendered so much money as the Rent is.

And if it be to be paid on the Land, it seemeth the Lessor must doe the first Act; that is to say, demand it before the other is bound to pay it; and the other is not bound to tender it, till he demand it. But if it be to be paid at a place out of the Land, then the Lessee is bound to doe the first Act; that is to say, tender it at his perill. But it is good in these Cases to doe too much, and to have substantiall witnesses to prove what men doe; Abundant warinesse hurts not.

Abundans cautela non nocet.

And if a demand of rent be not made for time, place and manner, as is aforesaid, it is not good. And therefore, if one make a Lease of a House and divers Lands, and Woods to another for yeers, rendring one hundred pound rent at Michaelmas: provided, that if the rent be behind ten dayes after Michaelmas, the Lessor shall Reenter, [or shall forfeit ten pound in name of penalty;] In this Case the Lessor, if he will take advantage of the condition, must come the last part of the last of the ten dayes, time enough before Sunne set, to tell one hundred pound, to

to the House, and there demand the rent, and continue there till Sunne set ready to receive the money, *Bro. Disseisin 69.*

Modus & conventio vincunt legem. Et, volunti non fit injuria.

And yet by agreement of the parties it may be otherwise; for manner and agreement overcome the Law. And he who is willing cannot be wronged, *Cok. 7. 28. 25. 40. Dyer, 78. 32. Brooke 68.* And in all these Cases, where a Tender is requisite, and legally made, it giveth as much advantage to him that doth tender the rent, albeit the party refuse it, as if he did accept it, *Co. upon Litt. 207. 206. 209.*

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